Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 63

CONNECTICUT RAILWAY AND LIGHTING COMPANY, PETITIONER,

vs.

HOWARD S. PALMER, JAMES LEE LOOMIS AND HENRY B. SAWYER, AS TRUSTEES, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 28, 1932.

CERTIORARI GRANTED OCTOBER 10, 1932.

INDEX*

	PAGE
Statement under Rule 13	1
Petition of The New York, New Haven and Hartford Railroad Company for reorganization under Section 77	4
Petition of The Connecticut Company for reorganization under Section 77 B	8
Order # 1 granting said petition of the New Haven	14
Exhibit A—Notice to all Creditors and Stockholders	23
Order # 1 granting said petition of The Connecticut Company	24
Order continuing The Connecticut Company in possession	32
Report of The Connecticut Company as to rejection or rescission of contracts relating to Claimant's property	36
Petition of the New Haven Trustees and of the New Haven to terminate 1910 sublease	40
Order to The Connecticut Company to reject, rescind or otherwise terminate Claimant's contracts	43
Order to the New Haven Trustees and the New Haven to terminate 1910 sublease	46
Report of the New Haven Trustees and the New Haven on rejection of lease	47
Report of the Connecticut Company as to termination and rejection of contracts	50
Order as to filing claims against the New Haven	53
Order as to filing claims against The Connecticut Company	56

* This record is printed in two volumes—a complete index in each volume.

PAGE

Order continuing The Connecticut Company in possession 59
Order as to the New Haven Trustees filing claims against The Connecticut Company 60
Claimant's proof of claim against the New Haven 61
Answer of New Haven Trustees 77
Reply of Claimant 85
Claimant's proof of claim against The Connecticut Company 86
Exhibit A annexed to proofs of claim including:
Lease dated Dec. 19, 1906 by Claimant to The Consolidated Railway Company 101
Guarantee of lease by the New Haven. 128
Agreement between the New Haven and The Connecticut Company dated Feb. 28, 1910 130
Sublease from the New Haven to The Connecticut Company dated Feb. 28, 1910 135
Agreement between the New Haven and Housatonic Power Company dated Feb. 28, 1910 138
Sublease from the New Haven to Housatonic Power Company dated Feb. 28, 1910 143
Sublease from the New Haven and Housatonic Power Company to The United Electric Light and Water Company dated Dec. 30, 1911 147
Acceptance by the United Electric Light and Water Company dated Feb. 28, 1912 173
Agreement between the Claimant, Housatonic Power Company, The United Electric Light and Water Company and the New Haven, dated June 27, 1917 175

PAGE

Acceptance by The United Electric Light and Water Company dated June 27, 1917 190

Assignment from The United Electric Light and Water Company to The Connecticut Light and Power Company, dated August 9, 1917 192

Assignment from The United Electric Light and Water Company to The Connecticut Light and Power Company, dated August 9, 1917 194

Acceptance by The Connecticut Light and Power Company, dated Aug. 10, 1917 196

Acceptance by The Connecticut Light and Power Company, dated Aug. 10, 1917 198

Agreement between Connecticut Railway and Lighting Company, Housatonic Power Company, The United Electric Light and Water Company, The New York, New Haven and Hartford Railroad Company and The Connecticut Light and Power Company, dated July 23, 1918 ..... 199a

Tripartite Agreement between the New Haven, Connecticut Light and Power Company and the Claimant dated Apr. 26, 1921 200

Tripartite Agreement between the New Haven, Connecticut Light and Power Company and the Claimant dated Apr. 26, 1921 212

Tripartite Agreement between the New Haven, The Connecticut Company and the Claimant dated July 6, 1926 217

Tripartite Agreement between the New Haven, The Connecticut Company and the Claimant dated July 6, 1926. 224

PAGE

Motion of The Connecticut Company to expunge Claimant's claim 236
Answer of Claimant to motion to expunge.. 239
Memorandum of Decision on motion to expunge 246
Answer of The Connecticut Company to Claimant's proof of claim..... 258
Reply of Claimant..... 266
Petition for compensation for use and occupation by Claimant..... 267
Answer of The Connecticut Company to Claimant's petition for compensation... 270
Order dismissing petition for compensation 273
Petition by Claimant for restoration of its property 274
Answer of The Connecticut Company to petition for restoration..... 280
Petition by Claimant that the New Haven direct The Connecticut Company to restore property..... 283
Order directing The Connecticut Company to restore property to Claimant..... 287
Order directing the New Haven to turn over property and account..... 290
Petition of Claimant for appointment of Trustees for The Connecticut Company. 292
Order of publication of notice thereof.... 299
Exhibit A—Notice to all Creditors and Stockholders 300
Report of publication of notice..... 301
Answer of The Connecticut Company to Claimant's petition for trustees..... 303
Order denying petition for appointment of trustees 306
Tripartite Report by the New Haven, The Connecticut Company and the Claimant as to profits..... 307

	PAGE
Order on Report	311
Memorandum of Decision on claims of Claimant	313
Order on rehearing on claim of Claimant	367
Supplemental stipulation on claims of Claimant	369
Order appealed from	371
Case	377
Claimant's petition of appeal	1325
Order allowing Claimant's appeal	1327
Assignment of Errors (Claimant)	1329
Bond for Costs (Claimant)	1332
Citation (Claimant)	1334
Praecipe (Claimant)	1337
Petition and Order Allowing Appeal (Debtor)	1341
Assignment of Errors (Debtor)	1343
Citation (Debtor)	1347
Praecipe (Debtor)	1349
Stipulation for physical inclusion in the record without printing of Exhibits 36, 37 and 39 (Maps of bus routes)	1354
Order for physical inclusion in the record without printing of Exhibits 36, 37 and 39 (Maps of bus routes)	1356
Order Extending Claimant's Time to File Record	1357
Stipulation to Consolidate Appeal and Cross Appeal	1358
Stipulation Settling Record	1359
Clerk's Certificate Certifying Record	1360
Proceedings in U. S. C. C. A., Second Circuit	1361
Opinion, Manton, J.	1361
Judgment	1367
Orders denying petition for rehearing	1367
Clerk's certificate	1368
Order allowing certiorari	1369

CLAIMANT'S WITNESSES:

	PAGE
Carl H. Zipf—	
(Damages on rejection)	
Direct	379
Cross	387
Patrick T. Reilly—	
(Depreciation of trolley cars)	
Direct	390
Cross	403
Claude Bryan—	
(Track and Roadway)	
Direct	415
Cross	417, 422
Redirect	420
Recross	421
D. Ernest Frame—	
(Materials and Supplies)	
Direct	425
Cross	428
John D. Anderson—	
(Deferred maintenance on buildings)	
Direct	436
Cross	439
R. W. Wilbraham—	
(Overhead trolley: Deferred maintenance)	
Direct	442
Cross	449
Howard M. Smith—	
(Deferred maintenance on busses)	
Direct	460
Cross	467
Redirect	477

PAGE

Herbert A. George—
(Shortage of office equipment)
Direct 480
Cross 483

George H. Crosson—
(Shortage of busses)
Direct 484
Cross 494
Redirect 499
Recross 500

Charles H. Chapman—
(Shortage of busses)
Direct 503
Cross 515
Recross 521

Paul A. Rust—
(Shortage of busses)
Direct 522

Walter Carr—
(Income)
Direct 526, 552, 557
Cross 532, 541, 556, 558
Redirect 537, 568

DEBTOR'S WITNESSES:

William W. Bodine—
(Stock ownership)
Direct 564

W. H. Rowland—
(1910 agreement)
Direct 565

Richard J. Bennett—
(Money spent by the New Haven)
Direct 566

PAGE

Percy R. Leete—
(Money spent by the New Haven)
Direct 569
Cross 589
Redirect 589
Recross 590

Charles R. Harte—
(Renovations and extensions by the New Haven)
Direct 590

EXHIBITS.

Claimant's Exhibits:

	Offered page	Printed page
1. Stipulation on proofs of claim of Claimant against the Connecticut Company and the New Haven dated June 23, 1937	378	617
4. Statement of taxes accrued and unpaid by The Connecticut Company as at October 23 and October 31, 1935.....	388	624
5. Statement of taxes accrued and unpaid by The Connecticut Company for the period from October 31, 1935 to December 17, 1936.....	390	625
6. Statement of taxes accrued and unpaid by The Connecticut Company for the period December 17, 1935 to November 16, 1936.....	390	626

	Offered page	Printed page
7. Statement of amounts payable as rentals by The Connecticut Company under the terms of the lease agreement dated December 19, 1906, and subsequent agreements applicable thereto, the stipulated rentals accrued and unpaid at October 31, 1935, the stipulated rentals accrued and unpaid at October 23, 1935, the rentals accrued and unpaid during the period from October 31, 1935 to December 17, 1935 and the rentals accrued and unpaid from December 17, 1935 to November 16, 1936.....	390	628
8. Report on equipment of Claimant at Bridgeport, Connecticut, April 3, 1937.....	394	629
9. Report on equipment of Claimant at New Britain, Connecticut, April 17, 1937.....	394	824
10. Report on equipment of Claimant at Derby, Connecticut, April 19, 1937.....	395	861
11. Report on equipment of Claimant at Waterbury, Connecticut, April 10, 1937.....	395	951
12. Summary of inspection of track and roadway and passenger and service car equipment of Claimant's lines, inspection made in March, 1937.....	396	1042
13. Report on track and roadway of Claimant, April 24, 1937...	416	1046

	Offered page	Printed page
14. Equipment claim of Claimant against The Connecticut Company, May 17, 1937	422	1096
15. Data relative to different classes of materials and supplies	427	1118
16. Report of deferred maintenance on buildings as of November 16, 1936 by United Engineers and Constructors, Inc., May 12, 1937	438	1135
17. Report on deferred maintenance on the overhead trolley system as of November 16, 1936 by United Engineers and Constructors, Inc., May 5, 1937	444	1195
18. Report on the valuation of power generating and trolley feeder systems as of November 16, 1936, by United Engineers and Constructors, Inc., May 10, 1937	445	1198
19. Report on busses turned over to Claimant, November 16, 1936	461	1217
20. Report of trucks	464	1274
21. Report on garage equipment and tool shortage	466	1277
22. Report on spare bus equipment	466	1279
23. List of office equipment at Bridgeport, Connecticut	483	1280
27. Schedule showing bus shortages	526	1281
29. Copies of correspondence between Messrs. Chapman and Bennett showing bus shortages	510	1282

	Offered Page	Printed Page
30. Memorandum on bus shortage at Waterbury, Connecticut...	514	1306
32. Letter dated July 20, 1936, from Mr. Bennett to Mr. Bodine	523	1307
33. Memorandum on bus shortage at New Britain, Connecticut..	523	1309

DEBTOR'S EXHIBITS

100. Agreement of December 16, 1935, between the New Haven and The Connecticut Company cancelling lease of trolley properties	566	1310
101. List of Extensions of Claimant's trackage from date of lease to October 23, 1935, ...	578	1313
102. Statement of costs of properties leased in Exhibit 101....	588	1314
103. Summary of authorities prepared by Mr. Bennett (Extract)	567	1315
106. Estimate of expenditures on Claimant's properties recommended for the year 1907 (Extract)	568	1316

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

In Proceedings for the Reorganization of a Railroad.

In the Matter

of

The New York, New Haven and Hartford Railroad Company,

Debtor.

Statement Under Rule 13

This proceeding was commenced on October 23, 1935 by the filing in the United States District Court for the District of Connecticut on that date of a petition by the Debtor to the effect that it desired to effect a plan of reorganization in accordance with Section 77 of the Bankruptcy Act. On that date on Order was entered granting said petition.

The original parties and those who have become parties before this appeal are as follows:

The Claimant-Appellant, Connecticut Railway and Lighting Company; Howard S. Palmer, James Lee Loomis and Henry B. Sawyer, as Trustees of the Property of The New York, New Haven and Hartford Railroad Company; The New York, New Haven and Hartford Railroad Company, the Debtor;

The following have also become parties to the general proceeding for reorganization of The New York, New Haven and Hartford Railroad Company, Debtor, No. 16562 on the docket of the District Court for the District of Connecticut, or

have appeared in said proceedings: Bankers Trust Company, as Trustee; United States Trust Company of New York, as Trustee; Rhode Island Hospital Trust Company, as Trustee; Irving Trust Company, as Trustee; City Bank Farmers Trust Company, as Trustee; Treasurer of the State of Connecticut, as Trustee; Old Colony Trust Company; Reconstruction Finance Corporation; First National Bank of Boston, as Trustee; Life Insurance Company Group; The New York Trust Company, as Trustee; New York Life Insurance Company; Savings Banks Group; Manufacturers Association of Connecticut; National Rockland Bank; The Chase National Bank; Union Trust Company; Boston & Providence Railroad Corporation; Federal Emergency Administrator of Public Works; Railroad Credit Corporation; The Mutual Life Insurance Company of New York; Protective Committee for Shareholders of Old Colony Railroad Company; Howard S. Palmer, James Lee Loomis and Henry B. Sawyer, as Trustees of the property of Old Colony Railroad Company; Mutual Savings Banks Group; Aetna Life Insurance Company; Reorganization Plan Committee of Old Colony Railroad Company; Jean Annett; Bank of New York and Trust Company, as Trustee; Second National Bank of Boston; State Street Trust Company; Bank of the Manhattan Company, as Trustee; Merchants National Bank of Boston; National Shawmut Bank; The City of Holyoke; Guaranty Trust Company, as Trustee; Edward B. Aldrich, Abby A. Rockefeller and Winthrop W. Aldrich; and The Pennsylvania Railroad Company.

The Proof of Claim of the Claimant-Appellant was filed herein on April 30, 1936.

The Answer of the Trustees of the Debtor to said Proof of Claim was filed herein on February 11, 1937.

Statement Under Rule 13.

The Reply of the Claimant-Appellant was filed herein on May 19, 1937. 7

There has been no order of arrest and no attachment has been issued.

Trial of the issues herein was commenced on June 30, 1937, and continued through July 3, 1937, before the Honorable Carroll C. Hincks, United States District Judge, in the United States District Court for the District of Connecticut at New Haven, Connecticut, from which an Order on said Proof of Claim of the Claimant-Appellant was made and filed herein on September 27, 1937, and the appeal to this Court from said Order was allowed on the 15th day of October, 1937. 8

No question was referred to a commissioner or commissioners, master or referee.

Claimant-Appellant appears herein by:

Messrs. Emmet, Marvin & Martin,
48 Wall Street,
New York City.

The Appellees appear herein, respectively, as follows:

Howard S. Palmer, James Lee Loomis and Henry B. Sawyer, as Trustees of the Property of the Debtor by:

H. J. Wells, Esq., 9
The New York, New Haven and Hartford Railroad Company,
Yellow Building,
New Haven, Connecticut.

The Debtor by:

H. J. Wells, Esq.,
The New York, New Haven and Hartford Railroad Company,
Yellow Building
New Haven, Connecticut.

10 PETITION FOR ORDER No. 1

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

11 IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor. } No. 16562

Petition of The New York, New Haven and Hartford Railroad Company

19

TO THE HONORABLE THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT:

The petition of The New York, New Haven and Hartford Railroad Company, a railroad corporation (hereinafter referred to as the "Debtor") respectfully represents:

(1) That the Debtor is a railroad corporation organized and existing under the laws of the states of Connecticut, Massachusetts and Rhode

Island, and is a citizen and resident of the state of Connecticut; that it is a common carrier by railroad engaged in the transportation of persons and property in interstate commerce in the states of Connecticut, Massachusetts, Rhode Island and New York, and is not a street, suburban or interurban electric railway; that during the six months' period immediately preceding the filing of this petition the Debtor has had, and now has, its principal executive and operating office in the city of New Haven, Connecticut, in the District of Connecticut.

(2) That the Debtor has substantial amounts of taxes, maturities (including sinking fund payments), interest payments, and leased line rentals becoming due during the remainder of the calendar year 1935, including amounts due January 1, 1936, in the following amounts:

Taxes falling due October 24 to January 1, 1936, inclusive.	$ 4,426,330.00
Maturities, including bank loans, falling due October 25 to January 1, 1936, inclusive	6,217,600.00
Interest falling due October 25 to January 1, 1936, inclusive	3,506,383.00
Leased Line Rentals falling due November 1 to January 1, 1936 inclusive	958,173.00
Guarantees	517,448.00
Total	$15,625,934.00

16 that Debtor's cash balance on October 21, 1935 was $3,037,306.85 and its cash from all sources during the remainder of the year is estimated at $21,547,600; that its necessary operating expenditures for the remainder of the year are estimated at $18,648,000 so that the amount available for the above charges aggregating $15,625,934 will be approximately $5,936,306.85.

That the Debtor is thus without sufficient funds to pay and discharge the aforesaid obligations as they mature, and on information and belief alleges that it has no means of borrowing or otherwise procuring such funds; that it is
17 unable to meet its debts as they mature and desires to effect a plan of reorganization pursuant to Section 77 of Chapter VIII of the acts of Congress relating to bankruptcy.

(3) That a copy of this petition is this day being filed with the Interstate Commerce Commission.

(4) That the filing of this petition by and on behalf of the Debtor was duly authorized by resolution of the board of directors of the Debtor, adopted at a meeting thereof duly held on the 23rd day of October, 1935.

18 Wherefore, your petitioner prays that an order may be entered approving this petition as properly filed under said Section 77 and that it be granted all other and further relief to which it may be entitled.

The New York, New Haven and Hartford Railroad Company,

By H. S. Palmer,

Its President.

W. W. Meyer,

Petition of The New York, New Haven and Hartford Railroad Company.

STATE OF NEW YORK }
County of New York } ss.: 19

H. S. PALMER, being duly sworn, deposes and says that he is an officer, to wit, President of The New York, New Haven and Hartford Railroad Company, a railroad corporation, the petitioning Debtor mentioned and described in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes them to be true; also that said petition is filed in good faith. 20

H. S. PALMER.

Subscribed and sworn to before me this 23rd day of October, 1935.

RALPH B. BOYLE
Notary Public, Westchester Co. N. Y.
Certificate filed in N. Y. Co. No. 978
Registers No. 6B-565
Commission Expires March 30, 1936. 21
(SEAL)

22 PETITION FOR ORDER No. 1

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

23 IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor. No. 16587

Petition of The Connecticut Company

TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT:

24 The petition of The Connecticut Company (hereinafter called the "Debtor") under Section 77B of an Act entitled, "An Act to Establish a Uniform System of Bankruptcy throughout the United States," approved July 1, 1898, and acts amendatory thereof and supplementary thereto (hereinafter called the "Bankruptcy Act") respectfully represents:

(1) That the Debtor is a corporation, duly created, organized and existing under, and by virtue

of, the laws of the State of Connecticut, and a citizen and resident of said State, and is a street railway corporation subject to the jurisdiction of The Public Utilities Commission of said State, and is not a municipal, insurance or banking corporation, a building and loan association, a railroad corporation authorized to file a petition or answer under the provisions of Section 77 of the Bankruptcy Act or a corporation within the exceptions of paragraph (n) of Section 77B of said Act; that, during the six months' period immediately preceding the filing of this petition, and for many years prior thereto, the Debtor has had, and now has, its principal place of business and its principal executive and operating offices in the City of New Haven, State of Connecticut, in the District of Connecticut, and its principal assets in said District.

(2) That the nature of the business of the Debtor is the ownership and operation of street railways, motor busses and motor trucks for the transportation of passengers and merchandise in the State of Connecticut.

(3) That a brief description of the assets, liabilities, capital stock and financial condition of the Debtor is as follows:

(a) That the assets, liabilities and capital stock of the Debtor are set forth in the balance sheet of the Debtor as of September 30, 1935 (being the latest available balance sheet), attached hereto as "Exhibit A," and hereby made a part hereof. No changes in the Debtor's condition have occurred since that date other than through the usual course of business, except as herein otherwise set forth.

(b) That the capital stock of the Debtor, issued and outstanding, consists of 198,770 shares of common stock, of the par value of $100.00 per share, carried on the balance sheet at $19,877,000.00.

(c) That the Debtor owes a substantial amount of matured interest and has substantial amounts of taxes, equipment installments, interest payments, and leased line rentals becoming due during the remainder of the calendar year 1935, including amounts due January 1, 1936, as follows:

Matured interest unpaid.....	$2,057,490.00
Taxes falling due November 1 to January 1, 1936, inclusive.	105,000.00
Installments of principal falling due on contracts and notes covering the conditional purchase of equipment to January 1, 1936.....	39,148.00
Interest payments falling due November 1 to January 1, 1936, inclusive.....	188,789.00
Leased Line rentals falling due November 1 to January 1, 1936, inclusive.....	366,443.00
	$2,756,870.00

that the Debtor's cash balance on October 28, 1935 amounted to $131,622.02, and its cash from all sources from said date to the end of the year is estimated at $1,501,800; that its necessary operating expenditures (exclusive of taxes, rentals and other fixed charges) during said time are estimated at $1,156,500, so that the amount available for the above charges aggregating

$2,756,870.00 will be approximately $476,922.02; that the Debtor thus is and will be without sufficient funds to pay and discharge the aforesaid obligations, and on information and belief alleges that it has no means of borrowing or otherwise procuring such funds.

(4) That, by reason of the facts aforesaid, it is essential that the Debtor be afforded relief under Section 77B of the Bankruptcy Act.

(5) That the Debtor is unable to meet its debts as they mature, and that it desires to effect a plan of reorganization pursuant to said Section 77B.

(6) That the filing of this petition was duly authorized by the Debtor by resolution of its Board of Directors adopted at a meeting thereof, duly held on the 30th day of October, 1935.

WHEREFORE, your petitioner prays that an order may be entered approving this petition as properly filed under said Section 77B, and that it be granted all other and further relief to which it may be entitled.

THE CONNECTICUT COMPANY
By H. S. PALMER,
Vice President.

WILLIAM W. MEYER,
Attorney for Debtor,
71 Meadow Street,
New Haven, Connecticut.

UNITED STATES OF AMERICA,
District of Connecticut,
State of Connecticut,
City and County of New Haven, } ss.:

H. S. PALMER, being duly sworn, deposes and says: that he is an officer, to wit, the Vice-President of The Connecticut Company, a corporation, the petitioning Debtor mentioned and described in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true, and further that the petition is filed in good faith.

H. S. PALMER.

Subscribed and sworn to before me this 31st day of October, 1935.

OLGA C. BENGTSON,
Notary Public.

(SEAL)

Exhibit A annexed to Petition of The Connecticut Company.

Exhibit A

THE CONNECTICUT COMPANY

Consolidated Balance Sheet, September 30, 1935

Assets

Investments:		
Road and Equipment-Owned and Leased	$48,766,393.18	
Investment in Affiliated Companies	405,301.95	
Other Investments	265,943.94	
Total		$49,437,639.07
Current Assets:		
Cash	$ 230,413.42	
Materials and Supplies	437,947.69	
Other	255,575.07	
Total		923,936.18
Deferred Assets		3,571,991.84
Unadjusted Debits		43,533.43
Total Assets		$53,977,100.02

Liabilities

Capital Stock		$19,877,000.00
Long Term Debt		20,468,550.87
Current Liabilities:		
Loans and Notes Payable	$4,128,023.98	
Accounts and Wages Payable	258,828.24	
Matured Interest, Dividends and Rents Unpaid	1,864,100.72	
Accrued Interest, Dividends and Rents Payable	206,442.48	
Other	8,159.78	
Total		6,465,555.20
Deferred Liabilities		1,812,541.89
Unadjusted Credits:		
Tax Liability	$ 441,197.14	
Depreciation	8,669,843.72	
Other	601,329.67	
Total		9,712,370.53

40

ORDER No. 1

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

41

IN THE MATTER

OF

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 16562

Order

42 Upon due consideration of the petition of The New York, New Haven and Hartford Railroad Company, the above named Debtor, verified October 23, 1935, and filed herein this day, stating that such Debtor is unable to meet its debts as they mature and that it desires to effect a plan of reorganization in accordance with Section 77 of Chapter VIII of the acts of Congress relating to bankruptcy, and the Court being satisfied that such petition complies with said section and has been filed in good faith, it is

Order of The New York, New Haven and Hartford Railroad Company.

ORDERED:

(1) That said petition be, and it hereby is approved as properly filed under Section 77 of Chapter VIII of the acts of Congress relating to bankruptcy.

(2) That the Debtor be, and it hereby is authorized and directed, pending further order of this Court, to run, manage, maintain, operate and keep in proper condition and repair the railroad and properties of the Debtor, wherever situated, whether in this state, judicial circuit, or elsewhere; to manage, operate and conduct its business, and to this end to exercise its authority, rights and franchises and to discharge its public duties; to employ or discharge and to fix the compensation of all its officers, counsel, attorneys, managers, superintendents, agents and employees; to collect and receive the income, rents, revenues, tolls, issues and profits, accrued or to accrue, from its railroad and properties; to collect all its outstanding accounts, and all dividends and interest on securities belonging to it; to sell, convey, or lease property, real or personal, not needed in the operation of its railroad, and to exercise such rights of sale, conveyance, exchange and release as are reserved to, or available to it under its outstanding deeds of trust, mortgages, trust indentures, and similar instruments, and to use the proceeds of sale of released property as provided in such instruments, all in the same manner that it would be entitled to do in its own right; and, to the extent necessary to protect, preserve or benefit its railroad or properties or business, to make and pay for additions and betterments thereto and thereof; all of the

46 foregoing powers to be exercised by Debtor according to law, and subject to such supervision and control by the Court as the Court may exercise by further orders entered herein.

(3) That the Debtor is authorized in its discretion, from time to time until further order of this Court, out of funds now or hereafter coming into its hands, to pay:

(a) All taxes and assessments due or to become due upon the properties, income, franchises or business of the Debtor;

47 (b) All necessary current expenses in operating the railroad, preserving the assets, and conducting the business of the Debtor, including among other expenses the wages, salaries and compensation of all officers, attorneys, counsel, managers, superintendents, agents and employees retained by the Debtor; the payment of freight, ticket, switching, car mileage, per diem, switching reclaims, divisions, and all other interline accounts and balances; the adjustment, com-
48 promise or payment of claims for loss, damage or delay to freight, for overcharges and for reparation; the payment of joint facility and equipment rental and expenses, and the payment of accounts for materials and supplies; also all sums now or which may hereafter become due to other persons or corporations for car or equipment repairs, or for the occupation or use, jointly or otherwise, of buildings, depots, terminals, tracks, side tracks, yards, warehouses, shop, bridges, interlocking plants and other railroad facili-

ties, and such sums as may be necessary to 49
comply with the obligations of the Debtor under contracts or leases by virtue of which such ocupation or use may now or hereafter be enjoyed, but such payments shall not constitute affirmations of such contracts or leases, or any of them.

(c) Liabilities due and unpaid which were incurred by the Debtor within six months preceding the date of this Order in the usual and customary operation of its railroad and properties and the conduct of its business for 50
wages, salaries, fees and similar charges, and for material, supplies and equipment.

(d) Pending further order of the Court the Debtor also is authorized in its discretion to adjust, compromise, make advances for, pay or reimburse others for: claims for or arising out of loss, damage or delay to freight or baggage; overcharges; reparation; adjustments of or refunds for freight or other charges on shipments in connection with which there are transit or storage privileges; freight, ticket, switching, car mileage, per 51
diem, switching reclaims and all other interline accounts and balances; rental of equipment or rental of or expense arising from use or operation of or over joint or other facilities; outstanding checks for wages, fees or services; claims for personal injuries to employees which are preferred under the acts of Congress relating to bankruptcy; and other claims, charges or adjustments of similiar character between Debtor and other carriers in the conduct of their joint busi-

ness, between Debtor and its patrons and between Debtor and its employees; all regardless of when accrued.

(e) The cost of maintaining the corporate existence of the Debtor, including corporate, franchise, stamp and similar taxes, the necessary expense of keeping and preserving its corporate records, of maintaining transfer officers and agents, of registering and transferring its securities and of paying the proper charges and expenses of the trustees under indentures or mortgages pursuant to which securities of the Debtor have been issued.

(f) All payments due from time to time on existing pension systems, and all group insurance carried in whole or in part by the Debtor.

(g) Court costs and costs incurred before various state and federal Commissions or other administrative boards or tribunals.

(h) The expense of printing pleadings, motions, petitions, orders and other documents now on file or hereafter filed in this case, in sufficient quantities to provide copies thereof for the use of the Court, the Interstate Commerce Commission, the Debtor, parties to the cause, and others who may have a substantial interest therein; such expense to be taxed as costs in this case.

(4) That the Debtor, in its discretion, at any time prior to April 23, 1936, or prior to such other day as may be provided by further order

of this Court, may disaffirm any of its existing 55
contracts or leases. The disaffirmance of any such contract or lease shall be effective when notice of such disaffirmance, together with proof of service or mailing of a copy or copies thereof by registered mail to the other party or parties to such lease or contract, shall be filed of record in this proceeding. The performance by Debtor of any such contract or lease within said period or future periods allowed for disaffirmance thereof shall not constitute or be evidence of the adoption or assumption of such contract or lease by Debtor or the waiver by it of its right to dis- 56
affirm the same.

(5) That pending further order of the Court in the premises the Debtor is authorized and empowered to institute or prosecute in any court or before any tribunal of competent jurisdiction all such suits and proceedings as may be necessary in its judgment for the recovery or proper protection of its property or rights, and to make settlement of any thereof; and likewise to defend or to liquidate by written agreement or consent judgment, decree, order or award any claim, de- 57
mand or cause of action whether or not suit or other proceeding to enforce the same has been or shall be brought in any court or before any officer, department, commission, board or tribunal, but no payments shall be made by the Debtor in respect of any such claims accruing prior to the date of this order, or in respect of any actions, proceedings, or suits on such claims, without further order or direction of this Court, except such as may be permitted by this or other orders hereafter entered herein, and such as constitute

preferred claims under the acts of Congress relating to bankruptcy; and no action taken by the Debtor in defense or settlement of such claims, actions, proceedings, or suits shall have the effect of establishing any claim upon, or right in, the property or funds in the possession of the Debtor that otherwise would not exist.

(6) The Debtor shall close its present books of account at midnight on October 23, 1935. The Debtor shall open new books of account at the beginning of the day of October 24, 1935, and cause to be kept therein due and proper accounts of the earnings, expenses, receipts and disbursements of the Debtor, and shall preserve proper vouchers or receipts for all payments made on account thereof, and shall deposit the moneys coming into its hands in such of the banks in which funds of the Debtor are presently deposited as shall be selected by the Debtor, or in such other bank or banks as shall be selected and approved by this Court.

(7) That, not later than November 30, 1935, the Debtor shall file with the Clerk of this Court a statement of the assets and liabilities of the Debtor as of the close of business on October 23, 1935, and, within forty-five days after the close of each calendar month thereafter, shall file with said Clerk a statement of the assets and liabilities of the Debtor as of the close of business on the last day of the second preceding calendar month, together with a summary statement of the revenues and expenses of the Debtor for the second preceding calendar month. All such statements shall be certified as correct by the chief accounting officer of the Debtor.

(8) That all persons, firms and corporations whatsoever, and wheresoever situated, located or domiciled, be and they hereby are restrained and enjoined from interfering with, seizing, converting, appropriating, attaching, garnisheeing, levying upon, or enforcing liens upon, or in any manner whatsoever disturbing any portion of the assets, goods, money, deposit balances, credits, choses in action, interests, railroads, properties, or premises belonging to, or in the possession of the Debtor, or from taking possession of, or in any way interfering with the same, or any part thereof, or from interfering in any manner with the operation of its railroad or properties or the carrying on of its business by the Debtor under the orders of this Court, or from commencing or continuing any suits against the Debtor wherein any bond, except a bond for costs, may be required of the Debtor herein, either during the pendency of said proceedings or of subsequent proceedings therein by appeal or otherwise: Provided, that suits or claims for damages caused by the operation of trains, busses, or other means of transportation may be filed and prosecuted to judgment in any court of competent jurisdiction.

(9) That all persons and corporations holding collateral, including deposit balances or credits, heretofore pledged by the Debtor as security for its notes or obligations be and each of them hereby is restrained and enjoined from selling, conventing or otherwise disposing of such collateral, deposit balances or other credits, or any part thereof, until further order of this Court.

(10) That the Debtor hereby is directed to give notice by mailing a copy of this Order to its mortgage trustees, and to cause a notice, directed

to its creditors and stockholders, to be published within five days from the date of the entry of this Order once in The New Haven Journal Courier, a newspaper published in the City of New Haven, and in The Hartford Daily Courant, a newspaper published in the City of Hartford, State of Connecticut, and in The Boston Herald, a newspaper published in the City of Boston, State of Massachusetts, and in The Wall Street Journal, a newspaper published in the City of New York, State of New York, and in The Providence Journal, a newspaper published in the City of Providence, State of Rhode Island, of a hearing to be held on November 6, 1935, at twelve o'clock noon, in the Court Room occupied by this Court in the United States Court House, New Haven, Connecticut, at which hearing, or any adjournment thereof, this Court will appoint one or more trustees of the Debtor's property. The notice of such hearing shall be substantially in the form of the notice annexed hereto, made a part hereof, and marked "Exhibit A".

When such mailing and publication has been completed the Debtor shall file with the Clerk of this Court its report with respect thereto.

(11) This Court reserves full right and jurisdiction to enter at any time such further orders in the premises as the Court may deems proper, including the right to amend, extend, limit, modify, or otherwise change or rescind the present order.

ENTER:

CARROLL C. HINCKS,
District Judge.

Dated:

"Exhibit A" annexed to the Order of The New York, New Haven and Hartford Railroad Company.

"Exhibit A" 67

NOTICE TO ALL CREDITORS AND STOCKHOLDERS

OF

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Pursuant to an order entered October 23, 1935, by the Honorable Carroll C. Hincks, Judge of the 68
District Court of the United States for the District of Connecticut, notice is hereby given that a hearing will be held on November 6, 1935, at twelve o'clock noon, by said Judge, in the courtroom usually occupied by him in the United States Court House, New Haven, Connecticut, at which hearing the Court will, pursuant to the provisions of Section 77 of the Act entitled: "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and acts amendatory thereof and supplementary thereto, appoint one or more trustees of 69
the property of said The New York, New Haven and Hartford Railroad Company.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

Dated at New Haven, Connecticut,
October 23, 1935.

70 ORDER No. 1

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

71

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor. } No. 16587

Order

72 Upon due consideration of the petition of The Connecticut Company, the above named Debtor, verified October 31, 1935, and filed herein this day, stating the requisite jurisdictional facts under Section 77B of Chapter VIII of the acts of Congress relating to bankruptcy, the nature of the business of such Debtor, its assets, liabilities, capital stock, and financial condition in brief description, facts showing the need for relief under said Section, that such Debtor is unable to meet its debts as they mature and that it desires to effect a plan of reorganization in accordance with said Section; and the Court being satisfied that such petition complies with

said Section and has been filed in good faith, 73
it is ORDERED, ADJUDGED AND DECREED

(1) That the said petition be, and it hereby is, approved as properly filed under Section 77B, Chapter VIII of the acts of Congress relating to bankruptcy.

(2) That the Debtor be, and it hereby is, authorized and directed, pending further order of this Court, to run, manage, maintain, operate and keep in proper condition and repair the assets, properties and business of the Debtor, wherever situated, whether in this State, judicial circuit, 74
or elsewhere; to manage, operate and conduct its business, and to this end to exercise its authority, rights and franchises and to discharge its public duties; to employ or discharge and to fix the compensation of all its officers, counsel, attorneys, managers, superintendents, agents and employees; to collect and receive the income, rents, revenues, tolls, issues and profits, accrued or to accrue, from its assets, properties, and business; to collect all its outstanding accounts and all dividends and interest on securities belonging to it; to sell, convey or lease property, 75
real or personal, not needed in the operation of its business, and to exercise such rights of sale, conveyance, exchange and release as are reserved to, or available to, it under its outstanding leases and similar instruments and to use the proceeds of sale of released property as provided in such instruments, all in the same manner as it would be entitled to do in its own right; and to the extent necessary to protect preserve or benefit its assets, properties and business, to make and pay for additions thereto and betterments thereof; all of the foregoing powers to be exercised

by the Debtor according to law, and subject to such supervision and control by the Court as the Court may exercise by further orders entered herein.

(3) That the Debtor is authorized in its discretion, from time to time until further order of this Court, out of funds now or hereafter coming into its hands, to pay:

(a) All taxes and assessments due or to become due upon the properties, income, franchises or business of the Debtor;

(b) All necessary current expenses in operating the properties, preserving the assets, and conducting the business of the Debtor, including among other expenses the wages, salaries and compensation of all officers, attorneys, counsel, managers, superintendents, agents and employees retained by the Debtor; the payment of accounts for materials and supplies and insurance; and such sums as may be necessary to comply with the obligations of the Debtor under contracts or leases by virtue of which occupation or use of facilities relating to its business may now or hereafter be enjoyed, but such payments shall not constitute affirmations of such contracts or leases, or any of them.

(c) Liabilities due and unpaid which were incurred by the Debtor within six months preceding the date of this Order in the usual and customary operation of its assets and properties and the conduct of its business for wages, salaries, fees and similar charges, and for material, supplies and equipment.

(d) Pending further order of the Court, 79
the Debtor also is authorized in its discretion to adjust, compromise, make advances for and pay or reimburse others for claims for or arising out of loss, damage or delay to freight or baggage; overcharges; outstanding checks for wages, fees and services, and other claims, charges or adjustments of similar character between Debtor and its patron and between Debtor and its employees, regardless of when accrued.

(e) The cost of maintaining the corporate existence of the Debtor, including corporate, 80
franchise, stamp and similar taxes, and the necessary expense of keeping and preserving its corporate records, and of registering and transferring its securities.

(f) All payments due from time to time on existing pension systems, and all groups insurance carried in whole or in part by the Debtor.

(g) Court costs and costs incurred before various state and federal Commissions or other administrative boards or tribunals. 81

(h) The expense of giving and publishing all notices and of printing pleadings, motions, petitions, orders and other documents now on file or hereafter filed in this proceeding, in sufficient quantities to provide copies thereof for the use of the Court, the Public Utilities Commission of the State of Connecticut, the Debtor, parties to the cause, and others who may have a substantial interest therein; such expense to be taxed as costs in this proceeding.

82 (4) That the Debtor shall be allowed until March 31, 1936, unless the time be extended further by order of this Court, within which to report to the Court as to the advisability of rejecting any contract of the Debtor, executory in whole or in part, including unexpired leases. The performance by the Debtor of any such contract or lease, within the period allowed for such report and until entry of an order directing such rejection, shall not be deemed to conclude the Court or the Debtor in respect of such election or to constitute an election.

83 (5) That pending further order of the Court in the premises the Debtor is authorized and empowered to institute or prosecute in any court or before any tribunal of competent jurisdiction all such suits and proceedings as may be necessary in its judgment for the recovery or proper protection of its property or rights, and to make settlement of any thereof; and likewise to liquidate by written agreement or consent judgment, decree, order or award any claim, demand or cause of action whether or not suit or other proceeding to enforce the same has been brought
84 in any court or before any officer, department, commission, board or tribunal, but no payments shall be made by the Debtor in respect of any such claims accruing prior to the date of this order, or in respect of any proceedings on such claims, without further order or direction of this Court, except such as may be permitted by this or other orders hereafter entered herein, and such as constitute preferred claims under the acts of Congress relating to bankruptcy; and no action taken by the Debtor in settlement of such claims, actions, proceedings, or suits shall have

the effect of establishing any claim upon, or right 85
in, the property or funds in the possession of the Debtor that otherwise would not exist.

(6) The Debtor shall close its present books of account at midnight on October 31, 1935. The Debtor shall open new books of account at the beginning of the day of November 1, 1935, and cause to be kept therein due and proper accounts of the earnings, expenses, receipts and disbursements of the Debtor, and shall preserve proper vouchers or receipts for all payments made on account thereof, and shall deposit the moneys coming into its hands in such of the banks in 86
which funds of the Debtor are presently deposited as shall be selected by the Debtor, or in such other bank or banks as shall be selected and approved by this Court.

(7) That, not later than December 15, 1935, the Debtor shall file with the Clerk of this Court a statement of the assets and liabilities of the Debtor as of the close of business on October 31, 1935, and within forty-five days after the close of each calendar month thereafter, shall file with said Clerk a statement of the assets and liabilities 87
of the Debtor as of the close of business on the last day of the second preceding calendar month, together with a summary statement of the revenues and expenses of the Debtor for the second preceding calendar month. All such statements shall be certified as correct by the chief accounting officer of the Debtor.

(8) That all persons, firms and corporations whatsoever, and wheresoever situated, located or domiciled, be and they hereby are restrained and

enjoined from interfering with, seizing, converting, appropriating, attaching, garnisheeing, levying upon, or enforcing liens upon, or in any manner whatsoever disturbing any portion of the assets, goods, money, deposit balances, credits, choses in action, interests, railways, properties, or premises belonging to, or in possession of the Debtor, or from taking possession of, or in any way interfering with the same, or any part thereof, or from interfering in any manner with the operation of its railways or properties or the carrying on of its business by the Debtor under the orders of this Court, or from commencing or continuing any suits, actions or other proceedings in any court or before any association, organization, commission, board, referee or other tribunal, or otherwise, against the Debtor.

(9) That all persons and corporations holding collateral, including deposit balances or credits, heretofore pledged by the Debtor as security for its notes or obligations be and each of them hereby is restrained and enjoined from selling, converting or otherwise disposing of such collateral, deposit balances or other credits, or any part thereof, until further order of this Court.

(10) That the Debtor hereby is directed to give notice to its creditors and stockholders, by causing publication of a notice, directed to such creditors and stockholders, to be made at least once a week for two successive weeks in the New Haven Evening Register, a newspaper published in the City of New Haven, and in The Hartford Times, a newspaper published in the City of Hartford, State of Connecticut, of a hearing to be held on November 15, 1935, at eleven o'clock in

the forenoon, in the Court Room occpied by this Court in the United States Court House, New Haven, Connecticut, at which hearing, or any adjournment thereof, this Court will determine whether to appoint a Trustee or Trustees of the Debtor's property or to continue the Debtor in possession thereof. The notice of such hearing shall be substantially in the form of the notice annexed hereto, made a part hereof, and marked "Exhibit A."

When such publication has been completed the Debtor shall file with the Clerk of this Court its report with respect thereto.

(11) This Court reserves full right and jurisdiction to enter at any time such further orders in the premises as the Court may deem proper, including the right to amend, extend, limit, modify or otherwise change or rescind the present order.

ENTER:

CARROLL C. HINCKS,
District Judge.

Dated:
October 31, 1935.

94 Order No. 5

In the

DISTRICT COURT OF THE UNITED STATES

For the District of Connecticut

In Proceedings for the Reorganization of a Corporation

95 In the Matter of The Connecticut Company, Debtor. } No. 16587

Order Continuing the Debtor in Possession and Requiring Report Concerning Connecticut Railway & Lighting Company Property

96 The matter of whether to appoint a trustee or trustees of the Debtor's property or to continue the Debtor in possession thereof, pursuant to the provisions of subdivision (c) of Section 77B of Chapter VIII of the acts of Congress relating to bankruptcy, having come on for hearing on November 15, 1935, and it appearing to the Court that the Debtor has given notice of this hearing as directed in its Order No. 1 of October 31,

Order Continuing the Debtor in Possession and Requiring Report Concerning Connecticut Railway & Lighting Company Property.

1935, and the Court having heard the recommendations of counsel representing the Debtor, The New York, New Haven and Hartford Railroad Company, The Second National Bank of New Haven, certain employees of the Debtor, and Connecticut Railway & Lighting Company as to the personnel of trustees, and the Court having determined that it would best serve the interests of all parties in interest to adjourn said hearing until January 13, 1936, and to continue the Debtor in possession of its estate until the appointment and qualification of a trustee or trustees thereof, and none of the aforesaid counsel having objected to said adjournment or to the continuance of the Debtor in possession, and the Court being fully advised in the premises, it is

ORDERED:

1. That the hearing to determine whether to appoint a trustee or trustees of the Debtor's property or to continue the Debtor in possession thereof be, and it hereby is, adjourned until January 13, 1936, at 11 A. M.

2. That the Debtor be, and it hereby is, continued in possession of its estate until the appointment and qualification of a trustee or trustees thereof.

3. That the Debtor have, except as changed by this order and until the appointment and qualification of a trustee or trustees of its property, all the rights, privileges, powers and duties heretofore granted to or imposed upon it pursuant

to said Order No. 1 and all orders supplementary thereto and amendatory thereof, all of said orders being hereby incorporated in and made a part of this order by reference.

4. That, until the appointment and qualification of a trustee or trustees of its property, the Debtor have all the title to and shall exercise, consistently with the provisions of said Section 77B, as amended, all the powers of a trustee appointed pursuant to said Section 77B, as amended, and the same powers as those exercised by a receiver in equity to the extent consistent with said Section 77B, as amended.

5. That, until the appointment and qualification of a trustee or trustees of the Debtor's property, its officers shall be entitled to receive compensation from the Debtor at rates which do not exceed the rates of compensation received by such officers from the Debtor immediately prior to this order, and that no person shall be elected or appointed to any office of the Debtor, to fill a vacancy or otherwise, without the prior approval of this Court.

6. That the Debtor report to this Court on or before December 2, 1935, as to the advisability of rejecting any contract of the Debtor, executory in whole or in part, including unexpired leases, in any way concerning the property of said Connecticut Railway & Lighting Company.

7. That the Debtor shall be at all times subject to the control of this Court, and to such limita-

tions, restrictions, terms, and conditions as this 103
Court may from time to time impose and prescribe.

8. That this Court reserves full right and jurisdiction to make, from time to time, such additional orders herein as the Court may deem proper, as well as any orders amending, extending, limiting, modifying, or otherwise changing this order.

ENTER:

104

CARROLL C. HINCKS,
District Judge.

Dated:
November 18, 1935.

105

106 IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF

107 THE CONNECTICUT COMPANY, Debtor. } No. 16587

Report of the Debtor as to the Advisability of Rejecting Executory Contracts Relating to Property Subject to a Lease Dated December 19, 1906 from the Connecticut Railway & Lighting Company to the Consolidated Railway Company

By a lease dated December 19, 1906 Connecticut
108 Railway & Lighting Company leased to The Consolidated Railway Company for 999 years certain street railway properties and franchises located in the State of Connecticut. The New York, New Haven and Hartford Railroad Company guaranteed the obligations of the lessee. The said lease is hereinafter referred to as the lease of 1906 and a copy is hereto annexed marked "A".

On or about May 31, 1907 The New York, New Haven and Hartford Railroad Company and The Consolidated Railway Company were merged

under the name of The New York, New Haven 109
and Hartford Railroad Company.

By an agreement dated February 28, 1910 between The New York, New Haven and Hartford Railroad Company and The Connecticut Company, the former agreed to sublet to the latter certain property including the street railway properties and franchises covered by the lease of 1906. The said agreement is hereinafter referred to as the agreement of 1910 and a copy is hereto annexed marked "B".

Pursuant to the agreement of 1910 a sublease 110
dated February 28, 1910 was executed by The New York, New Haven and Hartford Railroad Company and The Connecticut Company whereby the former sublet to the latter the said properties and franchises. The said sublease is hereinafter referred to as the sublease of 1910 and a copy is hereto annexed marked "C".

On December 30, 1911 a contract was entered into between The New York, New Haven and Hartford Railroad Company, Housatonic Power Company, The United Electric Light and Water 111
Company and The Connecticut Company relating to the use of certain poles and underground conduits for electric wires.

The contract of 1911 was subsequently amended in part by an agreement between The New York, New Haven and Hartford Railroad Company,

Report of the Debtor as to the Advisability of Rejecting Executory Contracts Relating to Property Subject to a Lease Dated December 19, 1906 from the Connecticut Railway & Lighting Company to the Consolidated Railway Company.

---

112 The Connecticut Light and Power Company and The Connecticut Company, dated March 28, 1933.

Five agreements relating to the partition of certain properties were entered into by Connecticut Railway & Lighting Company, The Connecticut Company, The Connecticut Light and Power Company, and The New York, New Haven and Hartford Railroad Company, dated December 29, 1922; March 4, 1924, May 22, 1924, November 30, 1927, and September 27, 1929, respectively.

113 Two agreements dated July 6, 1926 were entered into by Connecticut Railway & Lighting Company, The New York, New Haven and Hartford Railroad Company and The Connecticut Company relating to certain of the rights and obligations of one or other of the parties in connection with the properties or franchises subject to the lease of 1906 and/or the sublease of 1910. The said agreements are hereinafter referred to as the first agreement of 1926 and the second agreement of 1926, respectively, and copies are hereto annexed marked "D" and "E".

114 The Debtor has been and is operating the street railway properties sublet to it by the sublease of 1910, and/or other property substituted therefor or added thereto in accordance with the provisions of the lease of 1906, and it is now in possession of the same as such sublessee. Experience has proved that the said property cannot be operated under the provisions of the said con-

Report of the Debtor as to the Advisability of Rejecting Executory Contracts Relating to Property Subject to a Lease Dated December 19, 1906 from the Connecticut Railway & Lighting Company to the Consolidated Railway Company.

The Debtor therefore desires to be relieved of 115
the obligations imposed upon it by the said instruments.

Pursuant to Order No. 5 herein dated November 18, 1935, the Debtor respectfully reports to the Court that it deems it advisable to reject, disaffirm, rescind or otherwise terminate each of the executory contracts including unexpired leases referred to above insofar as the Debtor is a party to the same and insofar as the same relate to the properties and franchises subject to the lease from Connecticut Railway & Lighting 116
Company to The Consolidated Railway Company dated December 19, 1906.

Certified copy of the minutes of the special meeting of the Board of Directors held November 29, 1935 showing resolutions concerning this subject is attached hereto marked "F".

Respectfully submitted,

THE CONNECTICUT COMPANY,

By H. J. WELLS, 117
Attorney for Debtor.

118 PETITION FOR ORDER No. 23

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor	No. 16562

119

Petition of Trustees and Debtor for Authority to Terminate Sublease Dated February 28, 1910 from the Debtor to the Connecticut Company

120

Now come H. S. Palmer, W. M. Daniels and James Lee Loomis, Trustees of the property of the Debtor, and The New York, New Haven and Hartford Railroad Company, Debtor, and respectfully represent:

1. That on February 28, 1910 the Debtor sublet to its wholly owned subsidiary, The Connecticut Company, certain street railway property subject to a lease dated December 19, 1906 from the Connecticut Railway and Lighting Company

to The Consolidated Railway Company. Said 121
sublease contained the following as its final provision:

> "All the foregoing provisions of this instrument are subject to the condition that the life of this instrument may at any time be terminated by an agreement in writing of the parties hereto, whereupon all the rights of The Connecticut Company in and to the franchises and property conveyed by this instrument shall be restored to the Railroad Company and be by it possessed as fully as if this instrument had never been executed; 122
> provided, however, that a copy of such agreement between the parties hereto shall be promptly delivered to the said Connecticut Railway and Lighting Company."

2. That The Connecticut Company has filed a petition for reorganization in this Court under Section 77B of the Federal Bankruptcy Act, proceedings under which petition are now pending under the caption "In the Matter of The Connecticut Company, Debtor, No. 16587." True copies of the above-mentioned lease and sublease have been filed in said proceedings. 123

3. That by Order entered December 7, 1935, in said proceedings this Court directed The Connecticut Company to terminate certain of its executory contracts including this sublease. Your Trustees are of the opinion that it is to the best interest of the trust estate that this sublease be terminated according to the power reserved therein as above quoted.

124 4. That the filing of this petition by and on behalf of the Debtor was duly authorized by resolution of the Board of Directors of the Debtor adopted at a meeting thereof duly held on the 11th day of December, 1935.

WHEREFORE, your Trustees and the Debtor respectfully pray that an order be entered authorizing them to enter into a written agreement with The Connecticut Company to terminate the life of said sublease.

125 H. S. PALMER,
W. M. DANIELS,
JAMES LEE LOOMIS,
Trustees.

W. W. MEYER,
Counsel for Trustees.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
By H. S. PALMER,
President.

126

H. J. WELLS,
Attorney for Debtor.

(Verifications omitted in printing)

ORDER No. 6 127

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor.	No. 16587

128

Order Directing the Debtor to Reject, Disaffirm, Rescind or Otherwise Terminate Certain Executory Contracts Relating to Property Subject to a Lease Dated December 19, 1906, from the Connecticut Railway & Lighting Company to The Consolidated Railway Company 129

This cause came on for further hearing on report of the Debtor with respect to the advisability of rejecting, disaffirming, rescinding or otherwise terminating executory contracts, including unexpired leases, relating to the properties or franchises subject to the lease from Connecticut Railway & Lighting Company to The Consolidated Railway Company dated December 19, 1906, and the Court having heard testimony in connection

130 therewith and being fully advised in the premises, it is ORDERED, ADJUDGED AND DECREED:

That the Debtor reject, disaffirm, rescind or otherwise terminate the following executory contracts, including unexpired leases insofar as the same relate to the properties and franchises subject to the lease from Connecticut Railway & Lighting Company to The Consolidated Railway Company, dated December 19, 1906, namely, two agreements dated February 28, 1910 between The New York, New Haven and Hartford Railroad
131 Company and The Connecticut Company; an agreement dated December 30, 1911 between The New York, New Haven and Hartford Railroad Company, Housatonic Power Company, The Connecticut Company and the United Electric Light and Water Company; agreements, dated respectively, December 29, 1922, March 4, 1924, May 22, 1924, November 30, 1927 and September 27, 1929, between Connecticut Railway & Lighting Company, The Connecticut Company, Connecticut Light and Power Company and The New York, New Haven and Hartford Railroad Company;
132 two agreements dated July 6, 1926 between Connecticut Railway & Lighting Company, The New York, New Haven and Hartford Railroad Company, and The Connecticut Company, and an agreement dated March 28, 1933 between The New York, New Haven and Hartford Railroad Company, The Connecticut Company and the Connecticut Light and Power Company.

Order Directing the Debtor to Reject, Disaffirm, Rescind or Otherwise Terminate Certain Executory Contracts Relating to Property Subject to a Lease Dated December 19, 1906, from the Connecticut Railway & Lighting Company to The Consolidated Railway Company.

Rejection of the said executory contracts shall 133
be effective when notice thereof, together with proof of service or mailing of a copy or copies thereof by registered mail to the other party or parties thereto, shall be filed of record in this proceeding.

ENTER:

CARROLL C. HINCKS,
District Judge.

Dated: December 7, 1935 134

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
filed

135

136 ORDER No. 23

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER

OF

137 THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor. No. 16562

Order Authorizing Trustees and Debtor to Terminate by Agreement Sublease from the Debtor Company to the Connecticut Company, Dated February 28, 1910

138 Upon due consideration of the petition of the Trustees and Debtor herein regarding the termination of a sublease of certain street railway property, dated February 28, 1910, from the Debtor Company to its wholly owned subsidiary The Connecticut Company, it is ORDERED, ADJUDGED and DECREED:

That the Trustees and the Debtor may enter into a written agreement with said The Connecticut Company to terminate said sublease, as provided in the final clause thereof.

ENTER:

Dated: December 14, 1935

CARROLL C. HINCKS, District Judge.

In the 139

DISTRICT COURT OF THE UNITED STATES

For the District of Connecticut

In Proceedings for the Reorganization of a Railroad

In the Matter

of

The New York, New Haven and Hartford Railroad Company, Debtor. No. 16562 140

Report of Mailing and Service of Notice of Disaffirmance of Lease Dated December 19, 1906 from Connecticut Railway and Lighting Company to the Consolidated Railway Company and of Disaffirmance of Other Executory Contracts Subsidiary Thereto

Now come H. S. Palmer, W. M. Daniels and James Lee Loomis, the Trustees of the property of the Debtor, by W. W. Meyer, their Counsel, and The New York, New Haven and Hartford Railroad Company, Debtor, by H. J. Wells, its attorney, and respectfully report to the Court: 141

That pursuant to authority granted in Orders No. 1 and No. 5 herein the Debtor and the Trustees of its property have given notice to the

Report of Mailing and Service of Notice of Disaffirmance of Lease Dated December 19, 1906 from Connecticut Railway and Lighting Company to the Consolidated Railway Company and of Disaffirmance of Other Executory Contracts Subsidiary Thereto.

---

142 other parties thereto or their successors of the disaffirmance and rejection of each of the executory contracts hereinafter described insofar as the same relates to the property and franchises subject to the lease from Connecticut Railway and Lighting Company to The Consolidated Railway Company, dated December 19, 1906; namely, the lease and guaranty agreement between Connecticut Railway and Lighting Company, The Consolidated Railway Company, and The New York, New Haven and Hartford Railroad Company dated December 19, 1906; two
143 agreements dated February 28, 1910 between The New York, New Haven and Hartford Railroad Company and Housatonic Power Company; an agreement dated December 30, 1911 between The New York, New Haven and Hartford Railroad Company, Housatonic Power Company, The Connecticut Company, and The United Electric Light and Water Company.

An affidavit of mailing is hereto attached showing that a copy of said notice, in a sealed wrapper, postage prepaid, was sent by United States registered mail on December 17, 1935 to each
144 of the following:

Connecticut Railway and Lighting Company, 1401 Arch Street, Philadelphia, Pa.

The Connecticut Light and Power Company, Assignee of Housatonic Power Company and The United Electric Light and Water Company, 36 Pearl Street, Hartford, Conn.

Report of Mailing and Service of Notice of Disaffirmance of Lease Dated December 19, 1906 from Connecticut Railway and Lighting Company to the Consolidated Railway Company and of Disaffirmance of Other Executory Contracts Subsidiary Thereto.

Said notice is attached to said affidavit of mailing, and service of a copy thereof is admitted on said notice by the Secretary of The Connecticut Company. 145

H. S. PALMER,
W. M. DANIELS,
JAMES LEE LOOMIS,
Trustees.

By W. W. MEYER,
Counsel for Trustees.

146

Dated:
December 17, 1935.

THE NEW YORK, AND NEW HAVEN AND HARTFORD RAILROAD COMPANY,
By H. J. WELLS,
Its Attorney.

Dated:
December 17, 1935. 147
Filed:
December 18, 1935.

(Affidavit and Notice omitted in printing)

148 IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor. No. 16587

149

Report of Debtor Concerning Rescission of Sublease Dated February 28, 1910 from the New York, New Haven and Hartford Railroad Company to the Connecticut Company and Disaffirmance of Other Executory Contracts Relating to Property Subject to a Lease Dated December 19, 1906 from Connecticut Railway and Lighting Company to the Consolidated Railway Company

150

Now comes the Debtor, by H. J. WELLS, its attorney, and respectfully reports to the Court:

1. That pursuant to the order of December 7, 1935 herein the Debtor has terminated the sublease, dated February 28, 1910, of certain street railway property from The New York, New Haven and Hartford Railroad Company to The Connecticut Company, the Debtor herein, in the manner provided in the final clause of said sublease.

Report of Debtor Concerning Rescission of Sublease Dated February 28, 1910 from the New York, New Haven and Hartford Railroad Company to the Connecticut Company and Disaffirmance of Other Executory Contracts Relating to Property Subject to a Lease Dated December 19, 1906 from Connecticut Railway and Lighting Company to the Consolidated Railway Company.

---

2. That the Debtor has given notice to the other 151
parties thereto or their successors of the disaffirmance and rejection of the following executory contracts insofar as such contracts relate to the properties and franchises subject to the lease from Connecticut Railway and Lighting Company to The Consolidated Railway Company, dated December 19, 1906; namely, the agreement between The New York, New Haven and Hartford Railroad Company and The Connecticut Company dated February 28, 1910 by which the former agreed among other things that certain of said properties and franchises should be sub- 152
let to The Connecticut Company by The New York, New Haven and Hartford Railroad Company; the agreement dated December 30, 1911 between The New York, New Haven and Hartford Railroad Company, Housatonic Power Company, The Connecticut Company and The United Electric Light and Water Company; the *five* agreements, dated respectively, December 29, 1922, March 4, 1924, May 22, 1924, November 30, 1927 and September 27, 1929, between Connecticut Railway and Lighting Company, The Connecticut Company, Connecticut Light and Power Company and The New York, New Haven and Hartford 153
Railroad Company; the two agreements dated July 6, 1926 between Connecticut Railway and Lighting Company, The New York, New Haven and Hartford Railroad Company, and The Con-

necticut Company; and the agreement dated March 28, 1933 between The New York, New Haven and Hartford Railroad Company, The Connecticut Company and The Connecticut Light and Power Company.

An affidavit of mailing is hereto attached showing that a copy of said notice, in a sealed wrapper, postage prepaid, was sent by United States registered mail on December 17, 1935 to each of the following:

Connecticut Railway and Lighting Company,
1401 Arch Street, Philadelphia, Pa.

The Connecticut Light and Power Company,
Assignee of Housatonic Power Company and The United Electric Light and Water Company,
36 Pearl Street, Hartford, Connecticut.

Said notice is attached to said affidavit of mailing, and service of a copy thereof is admitted on said notice by the Secretary of The New York, New Haven and Hartford Railroad Company.

THE CONNECTICUT COMPANY,
By H. J. WELLS,
Its Attorney.

Dated:
December 17, 1935.

Filed:
December 18, 1935.

ORDER No. 32 157

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER 158

OF

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor } No. 16562

Order Determining and Fixing the Time and Manner of Filing Claims

Pursuant to the mandatory provisions of subdivision (c), paragraph (7), of amendatory Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy requiring the Court to determine and fix a reasonable time within which the claims of creditors may be filed or evidenced and after which no claim not so filed or evidenced may participate except on order for cause shown, and the manner in which such claims may be filed or evidenced and allowed, it is ORDERED: 159

1 That the 1st day of May, 1936 be, and it hereby is, fixed as the reasonable time within which the claims of creditors of The New York, New Haven and Hartford Railroad Company,

160 Debtor, including claimants in tort whose claims accrued prior to October 23, 1935, may be filed or evidenced and after which no claim not so filed or evidenced may participate, provided, however, that claims arising out of the Debtor's rejection of a contract after April 1st, 1936, may be filed within thirty days after notice of such rejection is given.

2. That each claim shall be filed in duplicate with G. T. Carmichael, Comptroller of the Debtor, 71 Meadow Street, New Haven, Connecticut, who
161 is hereby directed immediately to stamp the date of receipt thereon and acknowledge receipt of the same.

3. That each claim shall set forth the name and address of the claimant, the nature of the claim, dates of accrual and the amounts of the various items, with such details as shall definitely advise the Debtor of the particulars thereof and distinguish the claim from other claims of like nature, and shall state whether suit is pending on such claim, and if so, the name of the Court in
162 which pending, also whether judgment has been recovered thereon, and shall describe any security for such claim, partial payments, offsets or counterclaims due the Debtor, and if any lien, priority, or preferential classification is claimed, the facts respecting the same shall be fully stated. The Debtor shall promptly examine each such claim, and if it finds the same correct and undisputed, it shall so advise the claimant; if any claim is disputed in whole or in part, the Debtor shall promptly move in the premises by answer or otherwise and bring the same to the attention of the Court for hearing or reference.

4. That the trustee or trustees under any mort- 163
gage, deed of trust, or indenture outstanding against the estate of the Debtor, or against any portion thereof, may, within the time hereby prescribed, file a verified claim in behalf of all bonds or securities outstanding under such mortgage, deed of trust, or indenture, in which event it shall be unnecessary for the holders of such bonds or securities to file claims in their own behalf.

5. That the Debtor hereby is directed to give notice of the foregoing numbered paragraphs of this order to its creditors by promptly causing publication of a notice, containing said para- 164
graphs and directed to such creditors, to be made once during each week for two consecutive weeks in the New Haven Journal Courier and in the Hartford Courant, newspapers published in the State of Connecticut, and in the Boston Herald, a newspaper published in the State of Massachusetts, and in the Wall Street Journal, a newspaper published in the City of New York, State of New York, and in the Providence Journal, a newspaper published in the City of Providence, State of Rhode Island, and the Debtor is further directed to mail copies of this order to its mort- 165
gage trustees or their counsel and to such others as have entered their appearances herein.

When such publication and mailing have been completed, the Debtor shall file with the Clerk of this Court its report with respect thereto.

ENTER:

CARROLL C. HINCKS,
District Judge.

Dated: January 4th, 1936.

166 ORDER No. 9

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER 167 OF THE CONNECTICUT COMPANY, Debtor.	No. 16587

Order Determining the Time and Manner of Filing Claims

Pursuant to the mandatory provisions of subdivision (c), clause (6), of Section 77B of the Bankruptcy Act, as amended, requiring the determination of a reasonable time within which
168 the claims and interests of creditors and stockholders of the Debtor may be filed or evidenced and after which no such claim or interest may participate in any plan of reorganization, except on order for cause shown, and the determination of the manner in which such claims and interests may be filed or evidenced and allowed, it is ORDERED:

1. That the 1st day of April, 1936 be, and it hereby is, fixed as the reasonable time within which the claims and interests of creditors and

stockholders of The Connecticut Company, Debtor including claimants in tort whose claims accrued prior to October 31, 1935, may be filed or evidenced and after which no such claim or interest may participate in any plan of reorganization, provided, however, that claims arising out of the Debtor's rejection of a contract after March 1, 1936, may be filed within thirty days after notice of such rejection is given. 169

2. That each claim shall be filed in duplicate with G. T. Carmichael, Comptroller of the Debtor, 71 Meadow Street, New Haven, Connecticut, who is hereby directed immediately to stamp the date of receipt thereon and acknowledge receipt of the same. 170

3. That each claim shall set forth the name and address of the claimant, the nature of the claim, dates of accrual and the amounts of the various items, with such details as shall definitely advise the Debtor of the particulars thereof and distinguish the claim from other claims of like nature, and shall state whether suit is pending on such claim, and if so, the name of the Court in which pending, also whether judgment has been recovered thereon, and shall describe any security for such claim, partial payments, offsets or counterclaims due the Debtor, and if any lien, priority, or preferential classification is claimed, the facts respecting the same shall be fully stated. The Debtor shall promptly examine each such claim, and if it finds the same correct and undisputed, it shall so advise the claimant; if any claim is disputed in whole or in part, the Debtor shall promptly move in the premises by answer 171

or otherwise and bring the same to the attention of the Court for hearing or reference.

4. That all interests of stockholders may be evidenced by the stock register of the Debtor and by such further or corrective proof by affidavit or otherwise as may be deemed necessary.

5. That the Debtor hereby is directed to give notice of the first three numbered paragraphs of this order to its creditors by promptly causing publication of a notice, containing said paragraphs and directed to such creditors, to be made once during each week for two consecutive weeks in the New Haven Journal Courier, the Hartford Courant, the Bridgeport Times-Star, the Waterbury Democrat, the Stamford Advocate, the Torrington Register, the Middletown Press, the Willimantic Chronicle, the New London Day, the Norwich Bulletin-Record, the Norwalk Hour, the Ansonia Sentinel, the Meriden Record, and the New Britain Herald, newspapers published in the State of Connecticut, and the Debtor is further directed to mail copies of this order to counsel of record for The Second National Bank of New Haven, Connecticut Railway & Lighting Company, and the Connecticut Joint Conference Board.

When such publication and mailing have been completed, the Debtor shall file with the Clerk of this Court its report with respect thereto.

ENTER:

CARROLL C. HINCKS,
District Judge.

Dated:

December 27, 1935.

ORDER No. 11 175

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor. } No. 16587 176

Order Terminating Hearing and Continuing the Debtor in Possession

The hearing on the matter of whether to appoint a trustee or trustees of the Debtor's property or to continue the Debtor in possession thereof having been duly adjourned until today, and it now appearing that no party in interest desires to have the Court appoint a trustee or trustees of the Debtor's property at the present time, it is ORDERED: 177

1. That said hearing be, and it hereby is, terminated.

2. That the Debtor be, and it hereby is, continued in possession of its estate under the provisions of Order No. 5 of November 18, 1935 herein.

ENTER:

CARROLL C. HINCKS,
District Judge.

Dated: January 13, 1936.

178

Order No. 17

In the

DISTRICT COURT OF THE UNITED STATES

For the District of Connecticut

In Proceedings for the Reorganization of a Corporation

In the Matter
of
The Connecticut Company,
Debtor.

No. 16587

179

Order Respecting the Filing of Certain Claims by the Trustees of the Property of The New York, New Haven and Hartford Railroad Company

Upon the oral motion of the Trustees of The New York, New Haven and Hartford Railroad Company concerning the reasonable time heretofore fixed by this Court within which the claims of the creditors of The Connecticut Company, Debtor, may be filed or evidenced, it is Ordered:

1. That the time within which said Trustees
180 may file claims against the Debtor which arise out of or are connected with or attributable in any manner to the properties or franchises subject to the lease from the Connecticut Railway and Lighting Company to The Consolidated Railway Company, dated December 19, 1906, to said lease or to any other lease, sublease or agreement relating to said property, is hereby extended until further order of this Court.

Enter:

C. C. Hincks,
District Judge.

Dated: March 27, 1936.

CLAIM No. 203. 181

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	182 No. 16562

Proof of Claim

Now comes I. W. MORRIS and makes oath, and says that he is Treasurer of Connecticut Railway and Lighting Company, a corporation incorporated by and under the laws of the State of Connecticut (hereinafter called the "Claimant") with an office at No. 42 Church Street in the City of New Haven, State of Connecticut, and that he is duly authorized to make this proof of claim; and he says that the said The New York, New Haven and Hartford Railroad Company (hereinafter called the "Debtor"), now in reorganization before this Honorable Court pursuant to Section 77 of the Bankruptcy Act of the United States was at and before the filing of the original petition herein, and still is, justly and truly indebted to said Claimant on account of 183

certain claims, and that said Claimant is a creditor of said Debtor and is a person injured by the rejection of certain executory contracts and unexpired leases of property, and that the Claimant is entitled to the surrender, redelivery, conveyance, transfer and assignment to it by the Debtor of certain property and franchises of the Claimant, now in the possession of The Connecticut Company, a corporation incorporated by and under the laws of the State of Connecticut and a wholly owned subsidiary of the Debtor, and now in reorganization before this Honorable Court pursuant to Section 77-B of the Bankruptcy Act of the United States (*"In the Matter of The Connecticut Company*, No. 16,587") to the extent that said property and franchises shall not have been surrendered, redelivered, conveyed, transferred and assigned to the Claimant pursuant to the claim therefor filed by the Claimant in the said reorganization proceedings of said The Connecticut Company, and that the Claimant is entitled to damages from the Debtor suffered by the Claimant to the extent that said property and franchises shall not be so surrendered, redelivered, conveyed, transferred and assigned in proper condition, all as more particularly set forth below, namely:

(1) That by an agreement of lease dated December 19, 1906, made and entered into between the Claimant and The Consolidated Railway Company, a corporation then duly organized and existing under the laws of the State of Connecticut, the Claimant leased all its property and franchises, with the exceptions therein set forth, to said The Consolidated Railway Company for a term of 999 years from August 1, 1906, upon

the agreement of said The Consolidated Railway Company to pay rentals and upon the other terms and conditions therein set forth. That the property of the Claimant so leased consisted of extensive street railway properties and gas and electric properties in the State of Connecticut, which at that time were being operated by the Claimant. That performance of the obligations of said The Consolidated Railway Company thereunder was guaranteed by the Debtor by an agreement of guaranty dated December 19, 1906, (page 26 of Exhibit A, hereto annexed, hereinafter referred to). Copies of said lease dated December 19, 1906, including Schedules A, B, C, E, F, G and I therein referred to, of said agreement of guaranty, and of certain subleases and agreements under and related to said lease dated December 19, 1906 (and specifically listed in the table of contents of Exhibit A hereto) subsequently made and entered into between the Debtor, the Claimant, said The Connecticut Company and certain other corporations incorporated by and under the laws of the State of Connecticut, are hereto attached and collectively marked "Exhibit A". 187 188 189

(2) That on or about May 2, 1907, said The Consolidated Railway Company merged and consolidated with and into the Debtor, whereby the Debtor became successor to The Consolidated Railway Company under said lease dated December 19, 1906, and obligated to perform all of the obligations thereof with the same force and effect as if the same had been made to it as lessee directly.

(3) That under date of February 28, 1910, the Debtor made and entered into an agreement with

said The Connecticut Company and executed and delivered to said The Connecticut Company a sublease of a portion of the property and franchises of the Claimant, including its express business not specifically referred to therein, (hereinafter called "demised street railway properties") demised by said lease dated December 19, 1906, for the remainder of the term thereof, upon the agreement of said The Connecticut Company to pay three-quarters of the rentals reserved therein and upon the other terms and conditions set forth in said agreement and sublease, and the Debtor expressly agreed that its obligations under said agreement of guaranty dated December 19, 1906, should not in any wise be diminished. Said agreement and sublease appear respectively on pages 39 and 47 of Exhibit A hereto annexed.

(4) That under date of February 28, 1910, the Debtor made and entered into an agreement with Housatonic Power Company, a corporation then duly organized and existing under the laws of the State of Connecticut, and executed and delivered to the said Housatonic Power Company a sublease of a portion of the property and franchises of the Claimant (hereinafter called "demised gas and electric properties") demised by said lease dated December 19, 1906, for the remainder of the term thereof, upon the agreement of said Housatonic Power Company to pay one-quarter of the rentals reserved therein and upon the other terms and conditions set forth in said agreement and sublease; and that under date of December 30, 1911, the Debtor and said Housatonic Power Company executed and delivered to The United Electric Light and Water Company, a corporation then duly organized and existing under the

laws of the State of Connecticut, a sublease, to 193
which said The Connecticut Company was also a party, of a portion of the demised gas and electric properties, for the remainder of the term of said lease dated December 19, 1906, under the terms and conditions set forth in said sublease dated December 30, 1911. Said agreement and subleases appear respectively on pages 53, 61 and 67 of Exhibit A hereto. That under date of August 9, 1917, said Housatonic Power Company and said The United Electric Light and Water Company assigned said subleases mentioned in this paragraph to The Connecticut Light and 194
Power Company, a corporation incorporated by and under the laws of the State of Connecticut (then named The Rocky River Power Company) upon the terms and conditions therein set forth. Said assignments appear on pages 125, 129, 133 and 137 of Exhibit A hereto annexed.

(5) That in addition to the lease, subleases, agreements and assignments set forth in Exhibit A hereto annexed,

(a) the Claimant, the Debtor, said The Connecticut Company and said The Connecticut Light and Power Company have 195
made and entered into five agreements dated respectively December 29, 1922, March 4, 1924, May 22, 1924, November 30, 1927, and September 27, 1929, more particularly allocating between the demised street railway properties and demised gas and electric properties certain portions of the property demised under said lease dated December 19, 1906, (said five agreements being hereinafter collectively referred to as the "partition agreements"), and

196 (b) the Claimant, the Debtor, and said The Connecticut Company made and entered into twenty-five agreements dated respectively:

October 26, 1923	July 11, 1931 (3)
February 26, 1926	April 29, 1933 (2)
June 4, 1926	July 18, 1933
May 19, 1927	August 7, 1933
October 28, 1927	January 15, 1934 (2)
July 31, 1929	July 13, 1934
April 30, 1930	January 29, 1935
August 20, 1930 (3)	January 30, 1935
197 September 18, 1930	April 17, 1935 (2)

providing for the abandonment of portions of street railway lines constituting part of the demised street railway properties, upon the terms and conditions therein set forth, including in some instances provisions for the substitution of bus lines, and in addition thereto the Claimant under date of July 22, 1927, consented to the discontinuance by said The Connecticut Company of a street railway line (part of the demised street railway properties) between a point 1200' westerly of Ash Creek in the Town of Fairfield, Connecticut, to Library Corner in said Town, and to the sale by the Debtor of the 198 rails, ties, overhead equipment, etc. under the terms and conditions set forth in resolutions adopted by the Board of Directors of the Claimant on that date (said agreements and consent being hereinafter collectively referred to as "abandonment agreements").

(6) That pursuant to an order of this Court made herein on October 23, 1935, the Debtor on

or about December 17, 1935, rejected and disaffirmed the following executory contracts, including unexpired leases, in so far as the same relate to properties and franchises demised by said lease dated December 19, 1906, namely, said lease dated December 19, 1906, appearing on page 5 of Exhibit A hereto, said agreement of guaranty appearing on page 26 of Exhibit A hereto, said agreement and sublease dated February 28, 1910, appearing respectively on pages 53 and 61 of Exhibit A hereto, and said sublease dated December 30, 1911, appearing on page 67 of Exhibit A hereto. 199 200

(7) That pursuant to an order of this Court made on December 7, 1935, "In the Matter of the Reorganization of The Connecticut Company, Debtor, No. 16587" said The Connecticut Company on or about December 17, 1935, rejected and disaffirmed the following executory contracts, including unexpired leases, in so far as the same relate to properties and franchises demised by said lease dated December 19, 1906, namely, said agreement and sublease dated February 28, 1910, appearing respectively on pages 39 and 47 of Exhibit A hereto, said agreement dated December 30, 1911, appearing on page 67 of Exhibit A hereto, said partition agreements, two agreements dated July 6, 1926, appearing on pages 193 and 203 of Exhibit A hereto, and an agreement dated March 28, 1933, appearing on page 217 of Exhibit A hereto. 201

(8) That said The Connecticut Light and Power Company is in possession of and is operating the demised gas and electric properties of the Claimant, and, as provided in an agree-

202 ment dated June 27, 1917, between the Claimant, said Housatonic Power Company, said The United Electric Light and Water Company and the Debtor, appearing on page 105 of Exhibit A hereto, as amended by an agreement dated July 23, 1918, between the Claimant, said Housatonic Power Company, said The United Electric Light and Water Company, the Debtor, and said The Connecticut Light and Power Company, appearing on page 149 of Exhibit A hereto, said The Connecticut Light and Power Company is entitled to continue to maintain possession and operate said demised gas and electric properties upon
203 compliance with the terms and conditions therein set forth.

(9) That in and by said Agreement of guaranty dated December 19, 1906, (Exhibit A, pages 26 and 27) the Debtor agreed, among other things, that if the said lease dated December 19, 1906, shall fail for any reason to be operative, the Debtor will forthwith be taken to have assumed the position of lessee and will perform all the obligations thereof with the same force and effect as if the same had been made to it as lessee
204 directly. Said The Connecticut Company is in possession of and operating the demised street railway properties of the Claimant, and that by reason of the rejections and disaffirmance above referred to, the Claimant is entitled to possession thereof.

(10) That the demised street railway properties have been in the possession of and operated by said The Consolidated Railway Company or the Debtor from, at or about the commencement of the term of said lease dated December 19,

1906, until on or about February 28, 1910; and 205
thereafter continuously until the present time have been in possession of and have been operated by said The Connecticut Company, that said The Connecticut Company and its predecessors in interest have made extensive changes and alterations in and replacements of the demised street railway properties as permitted by the terms of said lease dated December 19, 1906, or otherwise; that said The Connecticut Company has mingled the demised street railway properties with its own property and property leased from others, and has operated all such property as a single 206
system; that the demised street railway properties consist at the present time of certain property owned by the Claimant at the commencement of the term of the said lease dated December 19, 1906, of certain property thereafter acquired by it pursuant to the terms thereof and made a part of the demised street railway properties, and of certain property acquired by said The Connecticut Company or its predecessors in interest, in the name of the Claimant or of said The Connecticut Company or said predecessors, pursuant to the covenants of said lease dated December 19, 1906, or otherwise, and that with 207
the exception of certain immovable property of record in the name of the Claimant, and owned by it at the time of the commencement of the term of said lease dated December 19, 1906, or so thereafter acquired by it and made a part of the demised street railway properties, the Claimant has no knowledge of the specific property which now constitutes the demised street railway properties other than from informal statements made by representatives of said The Connecticut Company to representatives of the Claimant, and

that such knowledge is in the sole possession of said The Connecticut Company, the Debtor's subsidiary.

(11) That the officers of Claimant are informed and believe that said The Connecticut Company and the Debtor have failed to maintain, operate and extend the demised street railway properties as required by the terms of said lease dated December 19, 1906, and sublease to the Debtor and other agreements set forth in Exhibit A hereto or hereinabove referred to and have failed to cause the same to be so maintained, operated and extended, and that the Claimant is entitled to damages from the Debtor on account of the condition thereof and deficiencies therein; but that the Claimant is unable to specify the amount of such damages reasonably in detail or with substantial accuracy pending a determination by this Court herein or in said proceedings "In the Matter of The Connecticut Company, Debtor, No. 16587", of the specific physical property constituting the demised street railway properties; that the officers of the Claimant are informed and believe that the Debtor and said The Connecticut Company have failed to perform or to cause to be performed other covenants contained in said lease dated December 19, 1906, and sublease and agreements, but, with the exception of the specific claims set forth below, the sole knowledge concerning the performance of such covenants is in the possession of the Debtor or of said The Connecticut Company.

(12) That the claims of this Claimant are distinguished from all other claims therein by reason of the fact they arise out of said lease dated

December 19, 1906, and said agreement of Guaranty dated December 19, 1906, and said executory agreements rejected or disaffirmed by order of this Court; that no suit is pending on any claim of this Claimant, except that the Claimant has filed a claim in the said proceedings entitled "In the Matter of The Connecticut Company, Debtor, (No. 16,587)", and that no judgment has been recovered on such claim, and that the claims of this Claimant are unsecured, except that the Claimant's claim for the surrender and redelivery of its demised street railway properties is a claim with regard thereto prior to any other claims. 211

The claims of this Claimant against the Debtor herein are as follows: 212

1. A claim for damages directly resulting from the rejection by the Debtor of its obligations to pay rental under the said lease dated December 19, 1906, hereinbefore referred to, which claim is calculated at the difference between the present rental value of the demised properties for the balance of the term of 999 years from August 1, 1906, and the present value of the stipulated rent for the balance of said term, the calculation thereof being as follows: 213

Present value of stipulated rent (viz. $1,399,418.00 per annum) for balance of said term, namely, 969 years calculated at 5% per annum.....	$27,988,057.
Present rental value (viz. $749,854.50 per annum) of said properties for the balance of said term, namely, 969 years calculated at 5% per annum..	14,996,927.
	$12,991,130.

214 2. A claim for damages directly resulting from the rejection by the Debtor of its obligations, other than to pay rentals, under said lease dated December 19, 1906, agreement of guaranty dated December 19, 1906, and other agreements above referred to, including, but not by way of limitation,

(a) the obligation to pay the principal at maturity of certain of the Claimant's First and Refunding Mortgage Bonds which become due in 1951, at which time said bonds will be outstanding and matured in the sum
215 of $3,116,000. after the prior redemption of the same by the application of sinking fund payments to that date, and

(b) the obligation to pay taxes as provided in the said lease, sublease and other executory agreements during the balance of the term.

3. A claim for the surrender, redelivery, conveyance, transfer and assignment from the Debtor to the Claimant of the demised street railway
216 properties as changed, altered, replaced and extended in accordance with the provisions of said lease dated December 19, 1906, said sublease and other agreements hereinbefore referred to, in such condition and with such equipment, materials and appurtenances as to fully fit it for the immediate use of the Claimant for the same purposes and in the same manner as at the commencement of the term of said lease. In connection therewith, the Claimant prays this Court

to enter an order directing the Debtor to render an accounting showing in detail the physical property now constituting such demised street railway properties. 217

4. A claim for damages for the condition of and deficiency of the demised street railway properties directly resulting from the failure of the Debtor, prior to the filing of the original petition herein, to perform its obligations under said lease dated December 19, 1906; the agreement of guaranty dated December 19, 1906, the sublease dated February 28, 1910, and other agreements hereinbefore referred to, including, but not by way of limitation, its obligations to maintain, operate, replace and extend the demised street railway properties. As above set forth, this claim cannot be set forth in reasonable detail pending a determination by this Court of the specific physical property constituting such demised street railway property under claim 3. 218

5. A claim for damages directly resulting from the failure of the Debtor, prior to the filing of the original petition herein, to perform its obligations, other than those relating to the condition of or deficiencies in the demised street railway property covered by claim 4 hereof, set forth in said lease dated December 19, 1906, the agreement of guaranty dated December 19, 1906, sublease and other agreements above referred 219

220 to, including, but not by way of limitation, the obligations to pay rent and taxes as follows:

Rent accrued to October 23, 1935	$282,551.28
1934 Federal income taxes	24,739.14
1935 Federal income taxes	59,091.70

Computed as follows:

Amount of return subject to audit	$63,031.15	
Less paid by The Connecticut Light and Power Company	3,939.45	
	$59,091.70	

221 of which an additional $3,059.07 has been paid by The Connecticut Light and Power Company under protest.

1935 Estimated Federal income tax to be paid on bondholders' interest	4,081.35
Total	$370,463.47

222 As set forth above, information as to the performance of other such covenants by the Debtor is in the sole possession of the Debtor or of the said The Connecticut Company and the Claimant therefore prays this Court to enter an order directing the Debtor to file an accounting herein showing the extent to which the other covenants under said lease dated December 19, 1906, sublease and agreements have been performed by it, including the following:

(a) the covenant to pay indebtedness and liabilities of the Claimant arising out of operation, maintenance and construction of the demised street railway properties prior to August 1, 1906, and shown in Schedule C attached to Exhibit A hereto, set forth on page 14 thereof. 223

(b) the covenant to pay all liabilities of the Claimant for injuries or damages to persons or property, set forth on pages 14 and 15 of Exhibit A hereto.

(c) the covenant to keep and perform all contracts in force and binding on the Claimant at the date of said lease dated December 19, 1906, shown in Schedule E attached to Exhibit A hereto, set forth on page 15 thereof. 224

(d) the covenant to pay taxes other than those above specified, set forth on page 15 of Exhibit A hereto.

(e) the covenant to hold the proceeds of the sale of any part of the demised street railway properties not required for immediate investment as a fund applicable only to such purposes, set forth on page 17 of Exhibit A hereto, and. 225

(f) the covenant to place in a separate fund the proceeds of any insurance to be applied to the rebuilding, etc. of the property damaged or destroyed or to other additions, extensions, etc. of the demised street railway properties, set forth on page 21 of Exhibit A hereto.

6. A claim to be paid the net amount pursuant to the adjustment provided in subdivision (1),

226 appearing on page 18 of Exhibit A hereto. As set forth above, the sole knowledge concerning the amount to be paid on such adjustment is in the possession of said The Connecticut Company and the Debtor, and the Claimant prays that this Court will enter an order directing the Debtor to file an accounting showing the amount thereof.

For the purposes of the Plan of Reorganization herein and its acceptance, this Claimant prays that it be placed in a class of creditors, the nature of the claims of which are similar to the claims of this Claimant, viz., claims arising by reason of the rejection of unexpired lease and
227 executory contracts, and that it be not placed in a class of simple unsecured creditors.

I. W. Morris

I. W. Morris
Treasurer of Connecticut Railway and Lighting Company.

Subscribed and sworn to before me, this 24th day of April, 1936.

228 Jas. J. Fallon

Notary Public
My commission expires January 21, 1937.
(County Clerk's certificate.)

(Exhibit A printed at page 101.)

ANSWER OF TRUSTEES TO CLAIM No. 203. 229

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor. 230 No. 16562

Answer of Trustees of Principal Debtor to Proof of Claim of Connecticut Railway and Lighting Company—Proof of Set-Off and Counterclaim 231

Now come Howard S. Palmer and James Lee Loomis who make oath and say that they are two of the three Trustees of the property of the Principal Debtor herein, hereinafter referred to as "said Debtor", and are duly authorized to make this answer to the proof of claim of Connecticut Railway and Lighting Company (hereinafter referred to as "claimant") and this proof of set-off and counterclaim on behalf of the estate of said Debtor, and for such answer and proof of set-off and counterclaim they say as follows:

1. Said Trustees deny that The Connecticut Company is or since November 16, 1936 has been

232 in possession of any property or franchises of the claimant or that the claimant is entitled to the surrender, redelivery, conveyance, transfer or assignment of any such property or franchises or that any such property was not surrendered, redelivered, conveyed, transferred or assigned to claimant in proper condition.

2. Said Trustees admit the allegations in paragraph 1 of claimant's proof of claim that by an agreement dated December 19, 1906 claimant
233 leased to The Consolidated Railway Company certain property and franchises and that the obligations of The Consolidated Railway Company thereunder were guaranteed by The New York, New Haven and Hartford Railroad Company, but deny that the said guarantor was said Debtor herein or that said Debtor is liable as guarantor under the said agreement. Said Trustees allege that the said guarantor company was merged into The Consolidated Railway Company in 1907 and the name of the merged company was thereupon changed to The New York, New
234 Haven and Hartford Railroad Company, said Debtor. Said Trustees further allege that by the said merger the obligation of guaranty under the said agreement of December 19, 1906 was merged into the lessee's obligation thereunder and thus extinguished.

3. Said Trustees admit that under date of February 28, 1910 said Debtor made an agreement with and a sublease to The Connecticut Company covering a portion of the property subject to the lease of December 19, 1906 as

alleged in paragraph 3 of the proof of claim. 235
They neither admit nor deny the other allegations of said paragraph, but refer to the sublease and agreement therein mentioned as the best evidence of their terms. Said Trustees further allege that the said sublease was at all times expressly subject to termination by the joint action of said Debtor and The Connecticut Company without the consent or prior knowledge of the claimant; that the claimant is not and never has been a party thereto; and that the agreement of guaranty of December 19, 1906, having been extinguished by merger in 1907, was not affected 236
by sublease or agreement of February 28, 1910.

4. Said Trustees admit that under date of February 28, 1910 and December 30, 1911 said Debtor entered into certain agreements with various companies as alleged in paragraph 4 of claimant's proof of claim, but neither admits nor denies the allegations of that paragraph as to the meaning or effect of those agreements inasmuch as the agreements themselves constitute the best evidence thereof. 237

5. Said Trustees deny that The Connecticut Company rejected the sublease dated February 28, 1910 as alleged in paragraph 7 of claimant's proof of claim, and allege that said Debtor, said Trustees and The Connecticut Company on or about December 16, 1935 terminated the said sublease by an agreement in writing made in accordance with the provisions contained in the last paragraph of the said sublease.

Answer of Trustees of Principal Debtor to Proof of Claim of Connecticut Railway and Lighting Company—Proof of Set-Off and Counterclaim.

238 6. Said Trustees neither admit nor deny the allegations contained in paragraph 8 of claimant's proof of claim, but leave the claimant to proof thereof if material.

7. Said Trustees deny the allegations contained in paragraph 9 of claimant's proof of claim.

8. Said Trustees deny that The Connecticut Company has been in possession of any property of the claimant since November 16, 1936 or has
239 since that time operated any such property as a part of a single system with its own property. Said Trustees also deny that said Debtor or The Connecticut Company has done or omitted to do any act or thing at any time contrary to the terms of the lease of December 19, 1906, and further deny that claimant has no knowledge of the specific property now constituting the demised street railway properties or that such knowledge is in the sole possession of The Connecticut Company, all as alleged in paragraph 10 of claimant's proof of claim.

240 9. Said Trustees deny all allegations in paragraph 11 of the claimant's proof of claim whether made on information and belief or otherwise.

10. Said Trustees admits that no judgment has been recovered on any claim of the claimant herein and that the claims, if any, of the claimant are unsecured, as alleged in paragraph 12 of claimant's proof of claim, and deny all other allegations in the said paragraph.

Answer of Trustees of Principal Debtor to Proof of Claim of Connecticut Railway and Lighting Company—Proof of Set-Off and Counterclaim.

11. Said Trustees deny, disprove and reject each and all of the claims (with the exception hereinafter stated) set forth by the claimant in its proof of claim. 241

12. Further answering said Trustees allege that

(a) their rejection or that of said Debtor of the lease of December 19, 1906 or any other executory contract or unexpired lease has not caused to the claimant any actual damage or injury determined in accordance with principles obtaining in equity proceedings, 242

(b) if there has been any such damage or injury resulting from such rejection, it was confined to the portions of the said lease and of the properties covered thereby which relate to the claimant's electric railway property and which by agreement between the parties constitute only three fourths of the whole,

243

(c) if there has been any such damage or injury resulting from such rejection it was limited to the period prior to claimant's re-entry upon its property on November 16, 1936,

(d) if there has been any such damage or injury resulting from such rejection the damages therefor are limited under or by analogy to section 63 of the Bankurptcy Act to an amount not exceeding three fourths of

244 the rent without acceleration reserved by the said lease for one year from the date of surrender of the premises.

13. Said Trustees admit the claimant's claim arising out of said Debtor's liability to pay rent and taxes up to October 23, 1935 as lessee under the lease of December 19, 1906 (but not under the agreement of guaranty of that date).

14. Further answering said Trustees deny that the information relative to claimant's property
245 or the acts of said Debtor or The Connecticut Company in connection therewith is in the sole possession of said Debtor or of The Connecticut Company or that an order for an accounting in connection therewith is now necessary. They allege that the claimant's property was turned over to the claimant and the claimant re-entered thereon on November 16, 1936 pursuant to the provisions of Order No. 107 in this proceeding and Order No. 38 in The Connecticut Company reorganization proceeding, both entered on claim-
246 ant's petition.

15. Said Trustees assert the following claims against the claimant by way of set-off, counterclaim, or in mitigation of damages:

(1) A counterclaim for the lessee's interest in the contents of the sinking fund referred to in the lease of December 19, 1906, the value of which interest amounted on October 23, 1935 to $3,495,505.96.

Answer of Trustees of Principal Debtor to Proof of Claim of Connecticut Railway and Lighting Company—Proof of Set-Off and Counterclaim.

(2) A counterclaim for the value of certain extensions of claimant's property. Said Debtor, its predecessor and The Connecticut Company have extended the mileage of claimant's property with the written consent of claimant by constructing tracks and appurtenances for conveying electricity to operate the same in highways or parts of highways or on private locations between the side lines of which at the time of the execution of the lease of December 19, 1906 there were no tracks, which extensions and appurtenances so constructed constituted part of the property repossessed by the claimant on November 16, 1936 and are now in its possession. Under the terms of the said lease the claimant is required on termination of the lease for any cause to pay to the lessee the actual value of such extensions and appurtenances appraised at the time of the termination of the lease as physical property. The value of such extensions and appurtenances is not less than $500,000. 247 248

(3) A claim in mitigation of damages for value of other improvements in the claimant's property. Said Debtor, its predecessor and The Connecticut Company at their sole expense have made additions, extensions, betterments and improvements, other than those described in the preceding claim, to and in the claimant's property at a capital cost in excess of six million dollars, of which approximately three and one-half million 249

250 dollars was expended for such improvements still in service on October 23, 1935. The value of such property still in service should in equity be considered in mitigation of damages claimed by the claimant.

H. S. Palmer,
James Lee Loomis,
Trustees of the property of The New York, New Haven and Hartford Railroad Company.

251

Subscribed and sworn to before me this 11th day of February, 1937.

Olga C. B[illegible]erson
Notary Public.

H. J. Wells
Attorney for Trustees.

252

IN THE 253

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor. No. 16562 254

Reply

NOW comes CONNECTICUT RAILWAY AND LIGHTING COMPANY, by EMMET, MARVIN & MARTIN, its attorneys, and for a reply to the answer of the Debtor herein to the proof of claim of Connecticut Railway and Lighting Company:

(1.) Denies each and every affirmative allegation in the said answer contained in paragraphs numbered 2, 3, 5, 12 and 14.

(2.) For a reply to the counterclaim of the 255
Debtor in said answer, this claimant denies each and every allegation contained in paragraph numbered 15 thereof.

EMMET, MARVIN & MARTIN,
Attorneys for Connecticut Railway
and Lighting Company,
48 Wall Street,
New York City.

GEORGE W. MARTIN,
—Of Counsel.

256 IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF

257 THE CONNECTICUT COMPANY, Debtor. } No. 16587

Proof of Claim of Connecticut Railway & Lighting Company

Now comes I. W. MORRIS and makes oath and says that he is Treasurer of Connecticut Railway and Lighting Company, a corporation incorporated by and under the laws of the State of Connecticut (hereinafter called the "Claimant")
258 with an office at No. 42 Church Street in the City of New Haven, State of Connecticut, and that he is duly authorized to make this proof of claim, and he says that the said The Connecticut Company (hereinafter called the "Debtor"), now in reorganization before this Honorable Court pursuant to Section 77B of the Bankruptcy Act of the United States was at and before the filing of the original petition herein and still is justly and truly indebted to said Claimant on account of certain claims, and that said Claimant is a creditor of said Debtor and is a person injured by the rejection by the Debtor of certain execu-

tory contracts, including unexpired leases, and 259
that the Debtor is in possession of certain property and franchises of the Claimant and that the Claimant is entitled to the surrender, redelivery, conveyance, transfer and assignment thereof to it, all as more particularly set forth below, namely:

(1) That by an agreement of lease dated December 19, 1906, made and entered into between the Claimant and The Consolidated Railway Company, a corporation then duly organized and existing under the laws of the State of Con- 260
necticut, the Claimant leased all its property and franchises, with the exceptions therein set forth, to said The Consolidated Railway Company for a term of 999 years from August 1, 1906, upon the agreement of said The Consolidated Railway Company to pay rentals and upon the other terms and conditions therein set forth. That the property of the Claimant so leased consisted of extensive street railway properties and gas and electric properties in the State of Connecticut which at that time were being operated by the Claimant. That performance of the obligations 261
of said The Consolidated Railway Company thereunder was guaranteed by The New York, New Haven and Hartford Railroad Company (hereinafter called the "Railroad Company"), a corporation incorporated by and under the laws of the State of Connecticut, and also now in reorganization before this Honorable Court (No. 16562) under Section 77 of the Bankruptcy Act of the United States. Copies of said lease dated December 19, 1906, including Schedules A, B, C, E, F, G and 1 therein referred to of said agree-

262 ment of guaranty and of certain subleases and agreements under and related to said lease dated December 19, 1906 (and specifically listed in the table of contents of Exhibit A hereto) subsequently made and entered into between the Debtor, the Claimant, the Railroad Company and certain other corporations incorporated by and under the laws of the State of Connecticut, are hereto attached and collectively marked "Exhibit A".

(2) That on or about May 2, 1907, said The
263 Consolidated Railway Company merged and consolidated with and into the Railroad Company, whereby the Railroad Company became successor to The Consolidated Railway Company under said lease dated December 19, 1906, and obligated to perform all of the obligations thereof with the same force and effect as if the same had been made to it as lessee directly.

(3) That under date of February 28, 1910, the Railroad Company made and entered into an agreement with the Debtor and executed and delivered to the Debtor a sublease of a portion of
264 the property and franchises of the Claimant, including its express business not specifically referred to therein, (hereinafter called "demised street railway properties") demised by said lease dated December 19, 1906, for the remainder of the term thereof, upon the agreement of the Debtor to pay three-quarters of the rentals reserved therein and upon the other terms and conditions set forth in said agreement and sublease. Said agreement and sublease appear respectively on pages 39 and 47 of Exhibit A hereto.

(4) That under date of February 28, 1910, the 265
Railroad Company made and entered into an agreement with Housatonic Power Company, a corporation then duly organized and existing under the laws of the State of Connecticut, and executed and delivered to the said Housatonic Power Company a sublease of a portion of the property and franchises of the Claimant (hereinafter called "demised gas and electric properties") demised by said lease dated December 19, 1906, for the remainder of the term thereof, upon the agreement of said Housatonic
Power Company to pay one-quarter of the rentals 266
reserved therein and upon the other terms and conditions set forth in said agreement and sublease; and that under date of December 30, 1911, Railroad Company and said Housatonic Power Company executed and delivered to The United Electric Light and Water Company, a corporation then duly organized and existing under the laws of the State of Connecticut, a sublease, to which the Debtor was also a party, of a portion of the demised gas and electric properties, for the remainder of the term of said lease dated 267
December 19, 1906, under the terms and conditions set forth in said sublease dated December 30, 1911. Said agreement and subleases appear respectively on pages 53, 61 and 67 of Exhibit A hereto. That under date of August 9, 1917, said Housatonic Power Company and said The United Electric Light and Water Company assigned said subleases mentioned in this paragraph to The Connecticut Light and Power Company, a corporation incorporated by and under the laws of the State of Connecticut (then named The Rocky River Power Company) upon

268 the terms and conditions therein set forth. Said assignments appear on pages 125, 129, 133 and 137 of Exhibit A hereto.

(5) That in addition to the lease, subleases, agreements and assignments set forth in Exhibit A hereto,

(a) the Claimant, the Debtor, the Railroad Company and said The Connecticut Light and Power Company have made and entered into five agreements dated respectively December
269 29, 1922, March 4, 1924, May 22, 1924, November 30, 1927, and September 27, 1929, more particularly allocating between the demised street railway properties and demised gas and electric properties certain portions of the property demised under said lease dated December 19, 1906 (said five agreements being hereinafter collectively referred to as the "partition agreements"), and

(b) the Claimant, the Debtor, and the Railroad Company made and entered into
270 twenty-five agreements dated respectively:

October 26, 1923	July 11, 1931 (3)
February 26, 1926	April 29, 1933 (2)
June 4, 1926	July 18, 1933
May 19, 1927	August 7, 1933
October 28, 1927	January 15, 1934 (2)
July 31, 1929	July 13, 1934
April 30, 1930	January 29, 1935
August 20, 1930 (3)	January 30, 1935
September 18, 1930	April 17, 1935 (2)

providing for the abandonment of portions of street railway lines constituting part of

the demised street railway properties, upon 271
the terms and conditions therein set forth, including in some instances provisions for the substitution of bus lines, and in addition thereto the Claimant under date of July 22, 1927, consented to the discontinuance by the Debtor of a street railway line (part of the demised street railway properties) between a point 1200' westerly of Ash Creek in the Town of Fairfield, Connecticut, to Library Corner in said Town, and to the sale by the Debtor of the rails, ties, overhead equipment, etc., under the terms and conditions set 272
forth in resolutions adopted by the Board of Directors of the Claimant on that date (said agreements and consent being hereinafter collectively referred to as "abandonment agreements").

(6) That pursuant to an order of this Court made herein on December 7, 1935, the Debtor on or about December 17, 1935, rejected and disaffirmed the following executory contracts, including unexpired leases, in so far as the same re- 273
late to properties and franchises demised by said lease dated December 19, 1906, namely, said agreement and sublease dated February 28, 1910, appearing respectively on pages 39 and 47 of Exhibit A hereto, said agreement dated December 30, 1911, appearing on page 67 of Exhibit A hereto, said partition agreements, two agreements dated July 6, 1926, appearing on pages 193 and 203 of Exhibit A hereto, and an agreement dated March 28, 1933 appearing on page 217 of Exhibit A hereto.

274 (7) That pursuant to an order of this Court made October 23, 1935, "In the Matter of The New York, New Haven and Hartford Railroad Company, Debtor No. 16562", the Railroad Company on or about December 17, 1935, rejected and disaffirmed the following executory contracts, including unexpired leases, in so far as the same relate to properties and franchises demised by said lease dated December 19, 1906, namely, said lease dated December 19, 1906, appearing on page 5 of Exhibit A hereto, said agreement of guaranty
275 appearing on page 26 of Exhibit A hereto, said agreement and sublease dated February 28, 1910, appearing respectively on pages 53 and 61 of Exhibit A hereto, and said sublease dated December 30, 1911, appearing on page 67 of Exhibit A hereto.

(8) That said The Connecticut Light and Power Company is in possession of and is operating the demised gas and electric properties of the Claimant and, as provided in an agreement dated June 27, 1917, between the Claimant, said
276 Housatonic Power Company, said The United Electric Light and Water Company and Railroad Company, appearing on page 105 of Exhibit A hereto, as amended by an agreement dated July 23, 1918, between the Claimant, said Housatonic Power Company, said The United Electric Light and Water Company, and said The Connecticut Light and Power Company, appearing on page 149 of Exhibit A hereto, said The Connecticut Light and Power Company is entitled to continue to maintain possession and operate said demised gas and electric properties upon compliance with the terms and conditions therein set forth.

(9) That the Debtor is in possession of and is operating the demised street railway properties of the Claimant but no rental or other compensation for the use and occupation thereof is now being paid to the Claimant by reason of the use of such property and that by reason of the rejection and disaffirmance above referred to, the Claimant is entitled to possession thereof. 277

(10) That the demised street railway properties have been in the possession of and operated by said The Consolidated Railway Company or the Railroad Company from, at or about the commencement of the term of said lease dated December 19, 1906, until on or about February 28, 1910, and thereafter continuously until the present time have been in possession of and have been operated by the Debtor, that the Debtor and its predecessors in interest have made extensive changes and alterations in and replacements of the demised street railway properties as permitted by the terms of said lease dated December 19, 1906, or otherwise, that the Debtor has mingled the demised street railway properties with its own property and property leased from others and has operated all such property as a single system, that the demised street railway properties consist at the present time of certain property owned by the Claimant at the commencement of the term of the said lease dated December 19, 1906, of certain property thereafter acquired by it pursuant to the terms thereof and made a part of the demised street railway properties and of certain property acquired by the Debtor or its predecessors in interest, in the name of the Claimant or of the Debtor or said predecessors, pursuant to the covenants of said lease dated December 19, 278 279

280 certain immovable property of record in the name of the Claimant and owned by it at the time of the commencement of the term of said lease dated December 19, 1906, or so thereafter acquired by it and made a part of the demised street railway properties, the Claimant has no knowledge of the specific property which now constitutes the demised street railway properties other than from informal statements made by representatives of the Debtor to representatives of the Claimant and that such knowledge is in the sole possession of the Debtor.

281 (11) That the officers of Claimant are informed and believe that the Debtor has failed to maintain, operate and extend the demised street railway properties as required by the terms of said lease dated December 19, 1906, and sublease to the Debtor and other agreements set forth in Exhibit A hereto or hereinabove referred to and that the Claimant is entitled to damages from the Debtor on account of the condition thereof and deficiencies therein, but that the Claimant is unable to specify the amount of such damages reasonably in detail or with substantial accuracy pending a determination by this Court of the spe-
282 cific physical property constituting the demised street railway properties; that the officers of the Claimant are informed and believe that the Debtor has failed to perform other covenants contained in said lease dated December 19, 1906, and sublease and agreements, but with the exception of the specific claims set forth below the sole knowledge concerning the performance of such covenants is in the possession of the Debtor.

(12) That the claims of this Claimant are distinguished from all other claims therein by reason of the fact they arise out of Debtor's

the demised street railway properties of the Claimant pursuant to said lease dated December 19, 1906, and to said sublease and executory agreements rejected or disaffirmed by order of this Court, that no suit is pending on any claim of this Claimant and that no judgment has been recovered on any such claim and that the claims of this Claimant are unsecured except that the Claimant's claim for the surrender and redelivery of its demised street railway properties is a claim with regard thereto prior to any other claims. 283

The claims of this Claimant against the Debtor herein are as follows: 284

1. A claim for damages directly resulting from the rejection by the Debtor of its obligations to pay rentals under the lease, sublease and other executory agreements hereinbefore referred to, which claim is calculated at the difference between the present rental value of the demised street railway properties for the balance of the term of 999 years from August 1, 1906, and the present value of the stipulated rent for the balance of said term, the calculation thereof being as follows: 285

Present value of stipulated rent (viz. $1,049,563.50 per annum) for balance of said term, namely, 969 years calculated at 5% per annum....	$20,991,043.
Present rental value (viz. $400,000. per annum) of said properties for the balance of said term, namely, 969 years calculated at 5% per annum.	$ 7,999,913.
	$12,991,130.

Stipulated rent for three

286 2. A claim for damages directly resulting from the rejection by the Debtor of its obligations, other than to pay rentals, under said lease, sublease and other executory agreements hereinbefore referred to, viz:

(a) the obligation to pay the principal at maturity of certain of the Claimant's First and Refunding Mortgage Bonds which become due in 1951, at which time said bonds will be outstanding and matured in the sum of $2,337,000. after the prior redemption of the same by the application of sinking fund
287 payments to that date, and

(b) the obligation to pay taxes as provided in the said lease, sublease and other executory agreements during the balance of the term.

3. A claim for the surrender, redelivery, conveyance, transfer and assignment from the Debtor to the Claimant of the demised street railway properties as changed, altered, replaced and extended in accordance with the provisions
288 of said lease dated December 19, 1906, said sublease and other agreements hereinbefore referred to in such condition and with such equipment, materials and appurtenances as to fully fit it for the immediate use of the Claimant in the same manner as at the commencement of the term of said lease. In connection therewith, the Claimant prays this court to enter an order directing the Debtor to render an accounting showing in detail the physical property now constituting such demised street railway properties.

289

4. A claim for damages for the condition of and deficiency of the demised street railway properties directly resulting from the failure of the Debtor, prior to the filing of the original petition herein, to perform its obligations under said lease dated December 19, 1906, the sublease dated February 28, 1910, and other agreements hereinbefore referred to, including, but not by way of limitation, its obligations to maintain, operate, replace and extend the demised street railway properties. As above set forth, this claim cannot be set forth in reasonable detail pending a determination by this Court of the specific physical property constituting such demised street railway property under claim 3.

290

5. A claim for damages directly resulting from the failure of the Debtor prior to the filing of the original petition herein, to perform its obligations, other than those relating to the condition of or deficiencies in the demised street railway property covered by claim 4, hereof, set forth in said lease dated December 19, 1906, sublease and other agreements above referred to, including, but not by way of limitation, its obligation to pay rent and taxes as follows:

291

Rent accrued to October 31, 1935	$304,472.13
1934 Federal income taxes	24,739.14
Total	$329,211.27

As set forth above, information as to the performance of other such covenants by the Debtor is in its sole possession and the Claimant therefore prays this Court to enter an order directing

292 the Debtor to file an accounting herein showing the extent to which it has performed its other covenants under said lease dated December 19, 1906, sublease and agreements including the following:

(a) The covenant to pay indebtedness and liabilities of the Claimant arising out of operation, maintenance and construction of the demised street railway properties prior to August 1, 1906, and shown in Schedule C attached to Exhibit A hereto, set forth on page 14 thereof.

293 (b) The covenant to pay all liabilities of the Claimant for injuries or damages to persons or property, set forth on pages 14 and 15 of Exhibit A hereto.

(c) The covenant to keep and perform all contracts in force and binding on the Claimant at the date of said lease dated December 19, 1906, shown in Schedule E attached to Exhibit A hereto, set forth on page 15 thereof.

294 (d) The covenant to pay taxes other than those above specified, set forth on page 15 of Exhibit A hereto.

(e) The covenant to hold the proceeds of the sale of any part of the demised street railway properties not required for immediate investment as a fund applicable only to such purposes, set forth on page 17 of Exhibit A hereto.

(f) The covenant to place in a separate fund the proceeds of any insurance to be applied to the rebuilding, etc. of the property

damaged or destroyed or to other additions, 295
extensions, etc. of the demised street railway properties, set forth on page 21 of Exhibit A hereto.

6. A claim to be paid the net amount pursuant to the adjustment provided in subdivision (1), appearing on page 18 of Exhibit A hereto. As set forth above, the sole knowledge concerning the amount to be paid on such adjustment is in the possession of the Debtor, and the Claimant prays that this Court will enter an order directing the Debtor to file an accounting showing the amount thereof. 296

7. A claim to be paid for the use and occupation of the Claimant's properties, of which the Debtor is now in possession and is operating, arising since October 31, 1935, which claim is an expense of the administration of the Debtor's estate, and is claimed as payable in full on a par with other expenses of administration, and will continue so long as the Debtor remains in such possession, in the following amount:

297

Accrued use and occupation from October 31, 1935, to April 1, 1936.....	$166,666.67

and in addition thereto at the rate of $400,000. per annum thereafter.

For the purposes of the Plan of Reorganization herein and its acceptance, this Claimant prays that it be placed in a class of creditors, the nature of the claims of which are similar to the claims of this Claimant, viz., claims arising by reason of the rejection of unexpired lease and

Proof of Claim of Connecticut Railway & Lighting Company.

executory contracts, and that it be not placed in a class of simple unsecured creditors.

Subscribed and sworn
to on March 28, 1936.

JAS J. FALLON
Notary Public

(Prothonotary's Certificate)

Filed: March 30, 1936.

I. W. MORRIS

I. W. MORRIS,
Treasurer of Connecticut Railway
and Lighting Company.

Exhibit A Annexed to Proof of Claim 301

LEASE

CONNECTICUT RAILWAY AND LIGHTING COMPANY

TO

THE CONSOLIDATED RAILWAY COMPANY

DATED DECEMBER 19, 1906.

Schedules A, B, C, D, E, F, G and 1 herein referred to are not printed.

302

CONNECTICUT RAILWAY AND LIGHTING COMPANY, hereinafter called the Lessor, hereby demises and lets unto THE CONSOLIDATED RAILWAY COMPANY, hereinafter called the Lessee, and to its successors and assigns, both the Lessor and Lessee being corporations existing under the laws of the State of Connecticut, all its property, of every nature whatsoever, now owned or hereafter acquired, together with the right to demand and receive, for the Lessee's own use, all tolls, rents, revenues, income and profits of the demised premises, including all the right, title and interest of the Lessor in and to all the property described as 303
mortgaged in the Indenture of Mortgage between Connecticut Railway and Lighting Company and Colonial Trust Company, Trustee, dated January 15, 1901, and recorded in the office of the Secretary of State of Connecticut in Volume 5, at pages 406 to 531, inclusive, of the Records of Railroad Mortgages, etc., to which record reference should be had for a fuller description, excepting therefrom such real property, rights, powers and franchises as have heretofore, after the date of said mortgage and prior to the execution of this

lease, been sold and conveyed by the Lessor, as shown in Schedule A hereinafter referred to, but not including personal property heretofore disposed of, as permitted by said mortgage; including also all its right, title and interest in and to all the property, whether real or personal (including the accumulations prior to August 1, 1906, of sinking fund referred to in Schedule B hereinafter mentioned), owned, possessed or used by it, situated in the several towns in the State of Connecticut hereinafter named; including also all its right, title and interest in, to or under any grants, orders, decisions, decrees, judgments or permits of any governmental or municipal authority, and in, to or under any franchises, privileges, licenses, permits, leases, contracts, covenants, declarations of trusts and agreements, and including all its right, title and interest in or to any property or assets of any description, and whether real or personal, and whether in possession or action, and however described and wherever situated; reserving only to the Lessor the rental hereinafter specified, such franchises as are necessary in order to enable it to maintain its existence and activity as a corporation, in order to enable it to perform its obligations under this lease, as well as such other of its obligations as are not assumed and performed by the Lessee, in order to enable it to receive, hold, manage and pay out or dispose of the sums of money which shall be by it received as rental under this lease, or otherwise, and in order to enable it to protect the interests of its stockholders and creditors, according to the true intent and meaning of this lease, and reserving to the Lessor the possession and control of its corporate seal, of the record books of meetings of its stockholders and directors, and

of its stock books, transfer books and Treasurer's 307
books and accounts, and its contracts and records other than its maps and deeds and other evidences of title; it being understood and agreed, however, that the Lessee shall have access to any books of account, contracts and other records of the Lessor when necessary in the judgment of the Lessee to carry out the purposes of this lease.

The Lessor represents and covenants that the property which it hereby demises, and for which the rental hereinafter specified is agreed to be paid, includes among other things all the electric railways now operated or maintained by it in 308
streets and upon private lands in the following towns of the State of Connecticut, to wit: Darien, Norwalk, Saugatuck, Westport, Fairfield, Bridgeport, Stratford, Milford, Huntington, Derby, Ansonia, Seymour, Orange, Waterbury, Naugatuck, Cheshire, Prospect, Hamden, Southington, Plainville, New Britain, Berlin and Newington, together with the appurtenances of said electric railways and with the rolling stock and railway equipment now in the possession of the Lessor, and also all the property, rights, privileges and franchises of The Norwalk, Bridgeport and Bethel Traction Company and of Thomaston and Watertown 309
Electric Railway Company, excepting as shown in Schedule A hereinafter referred to; all the plants or appurtenances now possessed, operated, or used by the Lessor for the generation, distribution or sale of electricity for light, power or other purposes, including such of its plants as are now existing in the following towns of the State of Connecticut: Cheshire, Greenwich, New Britain, Berlin, Newington, Plainville, Southington, Norwalk (including the city of South Norwalk), New Canaan, Waterbury, Nauga-

tuck, and Watertown, together with their appurtenances; all the plants now operated or maintained by it for the generation, distribution or sale of gas in the towns of Naugatuck, Greenwich and Norwalk (including the City of South Norwalk), in the State of Connecticut, together with their appurtenances; all rents, reimbursements and profits arising or hereafter to be obtained from a certain agreement between the Lessor and The United Gas Improvement Company, marked Schedule 1 and hereinafter referred to, also all of the Lessor's right, title and interest in and to said agreement and in and to the agreement and lease therein referred to and to any renewal thereof; a lease of The Roton Point Improvement Company dated January 1, 1903, for a period of three (3) years, renewed for a period of ten (10) years from November 15, 1904; also all papers, documents, maps, surveys, certificates, deeds and conveyances showing the nature of the Lessor's right, title and interest in or to the property hereby demised, or any part thereof; provided, however, that the Lessor shall at all reasonable times either have access to the original maps, deeds and other evidences of title or at the option of the Lessee shall be furnished with accurate and authentic copies of the same.

And the Lessor further represents and covenants that it has not granted or conveyed away any of the franchises granted by the General Assembly of the State of Connecticut to or otherwise acquired by the Lessor or by Cheshire Street Railway Company, The Greenwich Gas and Electric Lighting Company, The Norwalk Gas Light Company, Norwalk and South Norwalk Electric Light Company, Naugatuck Electric Light

Company, Southington and Plantsville Tramway 313
Company, Waterbury Traction Company, The Norwalk Street Railway Company, Central Railway and Electric Company, The Norwalk Tramway Company, The Westport and Saugatuck Street Railway Company, Milford Street Railway Company, The Bridgeport Traction Company, The Derby Street Railway Company, The Shelton Street Railway Company, The Norwalk, Bridgeport and Bethel Traction Company, and Thomaston and Watertown Electric Railway Company, excepting as shown in Schedule A hereinbefore referred to.

The Lessor further covenants that it will cause 314
the construction of the railway of The Naugatuck Valley Electric Railway Company to be completed from a connection with the existing railway of the Lessor in the town of Naugatuck to a connection with the existing railway of the Lessor in the town of Seymour, in accordance with the contract heretofore made for its construction, and that it will acquire, by purchase or otherwise, all the franchises, powers, rights and privileges of said The Naugatuck Valley Electric Railway Company, and that thereupon the said completed railway and the said franchises, pow- 315
ers, rights and privileges without expense to the Lessee (who shall be saved harmless by the Lessor from all debts of and liens and incumbrances upon said Railway Company, excepting those arising from the operation of the road and excepting the aforesaid mortgage of the Lessor) shall become subject to the terms of this lease as if at the time of the execution of this lease such franchises, powers, rights and privileges and such completed railway had been owned and possessed by the Lessor.

316 To Have and to Hold the premises unto said The Consolidated Railway Company, its successors and assigns, to its and their use for the term of nine hundred and ninety-nine (999) years from the first day of August, 1906, inclusive of said day. Provided that if it so be that the right to or to the use or enjoyment of any of the property hereinbefore referred to, which the Lessor now has or enjoys, would not pass to the Lessee but would be impaired or lost to the Lessor by reason of this lease, then so much of said property is excepted herefrom and
317 not included herein; but in such case the Lessor covenants to do and perform at the expense of the Lessee any lawful act or thing in relation thereto which the Lessee may request to enable the Lessee to have, use and enjoy the same as near as may be to the same extent as the remainder of the property hereby demised.

The Lessor covenants with the Lessee, its successors and assigns, that it has good right to make this lease in manner and form as herein written, and the Lessee covenants with the Lessor, its successors and assigns, that it has good right to
318 make and take this lease in manner and form as herein written.

And the Lessor covenants that there are no existing mortgages upon the demised premises other than those enumerated in Schedule B, hereto attached, subject to which the premises are demised by the Lessor to the Lessee. If it shall be ascertained that there are liens or incumbrances on said demised premises other than said mortgages, representing claims growing out of construction arising prior to August 1, 1906, the Lessor covenants to indemnify the Lessee against all loss, cost or damage arising [illegible]

The Lessor further covenants that the Lessee, 319
its successors and assigns, upon payment in the manner herein provided of the rent herein reserved and agreed to be paid by the Lessee and the keeping and performing of the covenants and agreements herein provided by the Lessee to be kept and performed on its part, shall have the uninterrupted possession, use, control and management of the property herein demised and all the tolls, rents, revenues, income, profits and benefit of the demised premises in its quiet, peaceful possession and enjoyment without detriment, hindrance, interruption or molestation from said 320
Lessor, its successors and assigns, for and during the term of this lease, subject, however, to the mortgages described in Schedule B and to such mortgages as shall hereafter be made in accordance with the provisions of this lease.

And the Lessor further covenants that it will, during the continuance of this lease, maintain its existence and organization as a corporation in due form of law, and for that purpose will hold all necessary meetings, elect all necessary officers, and make all necessary records, reports, transfers and reissues of stock certificates at its own expense, and that it will from time to time, and 321
at all times when thereto required by said Lessee, do and perform at the expense of the Lessee all such other acts, matters and things consistent with the rights of said Lessor under this lease as shall be necessary in the opinion and judgment of the said Lessee for the due preservation and protection of all the estate, property, rights, franchises and interests herein demised to the Lessee, and to carry into full effect the true intent and meaning of this lease, and that in default thereof

322 successors or assigns, or its or their lawful agents in the name and as the act of the said Lessor.

The Lessor further covenants that it will from time to time, if so requested by the Lessee, proceed to take, appropriate and condemn in due form of law, such real estate as the convenient exercise of the demised franchises or operation of the demised railways, lighting and power plants and other property, or as the orders of any public, governmental or municipal authority may render necessary or desirable in the opinion of the Lessee, the Lessee, however, advancing and paying all the expense therefor incurred, 323 including the legal expenses.

The Lessor further covenants that the Lessee may use the Lessor's name in prosecuting or defending any suits or proceedings so far as the Lessee may deem necessary for the use, quiet enjoyment or protection of the demised premises or to protect itself against unlawful exactions or demands by or under any public authority, but at the sole expense of the Lessee, saving the Lessor harmless from all loss, costs or damages thereby accruing.

The Lessor further covenants that it will from 324 time to time, and at any time hereafter, at the request of the Lessee, execute and deliver all other and further specific or general assignments and transfers, conveyances, instruments and assurances in the law for the further, better or more perfect assuring and vesting or confirming in and to the Lessee the demised premises, according to the true intent and meaning of these presents as by the Lessee shall or may be reasonably advised or required; but it is expressly covenanted that all such assurances, transfers and conveyances shall only be for the term and subject to the provisions of this lease.

The Lessor further covenants that it has issued 325
no outstanding bonds, notes, or other evidences of indebtedness except those described in Schedule B; that during the continuance of this lease the Lessor will not without the written consent of the Lessee, except to refund or discharge its present funded debt or any debt incurred in accordance with the provisions of this lease, extend the time of payment of any bonds outstanding at any time, or issue any other bonds, notes, obligations or evidences of indebtedness than those now outstanding, or call any bonds for purchase or payment; and that the Lessor during 326
the continuance in force of this lease, will not violate any of the covenants, agreements or conditions, either of any of the instruments referred to in Schedule B or of any mortgages hereafter executed by the Lessor, by doing or omitting anything which in accordance with the true intent and meaning of this lease ought not to be done or omitted by the Lessor.

The Lessor covenants that for the purpose of discharging the bonded indebtedness shown in Schedule B and such bonded indebtedness as shall hereafter be created under the provisions of this lease, it will upon and in accordance with the 327
written demand of the Lessee at any time during the continuance of this lease, make, execute and deliver to the Lessee its new bonds or other obligations or evidences of indebtedness (secured by mortgage upon all or part of the demised property if and as the Lessee may desire), and that the bonds or obligations or evidences of indebtedness so issued shall be for such time, and they and any mortgage securing the same shall be in such form and contain such terms, provisions, covenants and conditions as the Lessee

shall determine and as the Lessor may lawfully issue. Provided, that the total amount of such bonds, obligations or evidences of indebtedness outstanding at any time shall not be increased beyond the amount of the bonded indebtedness shown in Schedule B, and that the aggregate amount of interest annually payable thereon and of annual payments into any sinking funds shall not exceed the sum of six hundred and seventy-three thousand eight hundred and eighty-two dollars ($673,882), and that the liabilities of the Lessor under such bonds, obligations, evidences of indebtedness and mortgages shall not be more burdensome than at present. And further provided that in case such new bonds, obligations or evidences of indebtedness should be so drawn as to mature contemporaneously with or at a date later than the expiration of said term, they and any mortgage securing the same shall be in such form and contain such terms, provisions, covenants and conditions as shall be acceptable to the Lessor. The Lessee covenants that it will pay the expenses incident to the issue of any bonds hereafter issued according to the provisions of this lease and the recording of the mortgage securing the same, including the engraving of the bonds, and legal expenses.

Until payment in full of the principal and interest of all bonds secured by any existing mortgage described in Schedule B or by any mortgage of the demised property or of any part thereof hereafter made in accordance with the provisions of this lease, such mortgages shall constitute a paramount lien upon all the property, contracts, rights, privileges and franchises demised superior to the estate conveyed to the Lessee under this lease.

The Lessor further covenants that upon and in 331
accordance with the written demand of the Lessee, at any time during the continuance of this lease, it will call or cause to be called for purchase or payment, as the Lessee may desire, any of the bonds of the Lessor then outstanding which the Lessor shall have the right to call or cause to be called; provided, that the Lessee shall furnish the necessary funds for such purchase or payment.

In consideration of the premises, the Lessee hereby covenants and promises for itself, its successors and assigns, to pay to the Lessor (or 332
otherwise, as herein provided) as rental for the demised property, the sums following, to wit:

For the year beginning August 1, 1906, the sum of nine hundred and seventy-five thousand dollars ($975,000);

For the year beginning August 1, 1907, the sum of one million and forty-five thousand dollars ($1,045,000);

For the year beginning August 1, 1908, the sum of one million and forty-five thousand dollars ($1,045,000);

For the year beginning August 1, 1909, the sum of one million one hundred and seventy-five 333
thousand dollars ($1,175,000);

For the year beginning August 1, 1910, the sum of one million two hundred and fifty thousand dollars ($1,250,000);

For the year beginning August 1, 1911, the sum of one million three hundred and fifty thousand dollars ($1,350,000);

For the year beginning August 1, 1912, the sum of one million three hundred and seventy-five thousand dollars ($1,375,000);

For the year beginning August 1, 1913, the sum of one million three hundred and seventy-five thousand dollars ($1,375,000);

For the year beginning August 1, 1914, and annually thereafter during said term the sum of one million four hundred thousand dollars ($1,400,000).

Said sums shall be payable as follows, viz.: So much thereof as shall be required to pay the interest upon bonds and to keep and perform the sinking fund agreements of the Lessor shall be paid at the places indicated in Schedule B, hereto annexed, at least ten (10) days prior to the therein indicated due dates of the several respective payments, and at the respective times and places which shall be provided for any such payments of interest or into a sinking fund in any new bonds, obligations or mortgages hereafter to be executed by the Lessor in accordance with the provisions of this lease.

The balance of said rentals shall be payable in equal quarterly payments, viz., on the first days of each succeeding November, February, May and August in each and every year (the first payment to be made as of November first, 1906), during said term to the Connecticut Railway and Lighting Company, or its order, at its principal place of business in the State of Connecticut, or in lieu thereof at any other one place it may designate within the United States upon not less than thirty (30) days' notice of such designation in writing to the Lessee.

The Lessee also further covenants (provided the Lessor shall keep and perform its covenants herein regarding the execution and delivery to the Lessee of bonds, obligations and mortgages) that during the continuance in force of this lease

it will pay the principal of all the bonds described 337
in Schedule B, and of all bonds, obligations or evidences of indebtedness which shall be issued by the Lessor in accordance with the provisions of this lease as the same shall mature or otherwise become payable.

The Lessee further covenants that so far as the assets of the Lessor as enumerated in Schedule C are sufficient for the purpose (including in said assets two hundred and fifty-seven thousand dollars at par of treasury bonds, included in and a portion of total bonded indebtedness shown in Schedule B), it will pay all the outstanding 338
indebtedness and liabilities of the Lessor arising out of the operation, maintenance and construction of the railways or the lighting and power plants of the Lessor prior to August 1, 1906, and shown in the schedule hereinafter referred to marked C. The Lessee further covenants to perform all obligations for the supply of gas and electricity and to pay all indebtedness and liabilities arising from operation, maintenance and construction since July 31, 1906, whether the same be absolute or contingent, as the same shall from time to time fall due or be established, and the Lessee further covenants that it will assume and 339
pay all the liabilities of the Lessor now existing for injuries or damages to persons or property as the same shall from time to time hereafter be established, and will defend at its own expense all actions now pending or hereafter brought against the Lessor on account of claims for such liabilities (the claims for said liabilities so far as the same are known to the Lessor as of December 1, 1906, being shown in schedule hereinafter referred to marked D), and will keep and perform all other contracts in force and binding

upon the Lessor at the date hereof, which are shown in Schedule E, hereinafter referred to; provided, that all said assets of the Lessor at the close of business July 31, 1906, in excess of the amount necessary to pay the Lessor's indebtedness on that date, as set out above in this paragraph, and all the gross earnings of the Lessor received by it since July 31, 1906, shall be accounted for to the Lessee as part of the demised premises.

And the Lessee further covenants to pay from time to time during the continuance of this lease all taxes, water rents, rates, charges, license fees and assessments, ordinary and extraordinary, of every nature and description, which may be lawfully imposed or assessed in any way upon the Lessor or Lessee with reference to the demised property, the capital stock of the Lessor, its indebtedness, contracts, rights, privileges, franchises and revenues, or said reserved rental, or the disbursement thereof, or its right to do business or be a corporation; said payments to be made to the authority or treasurer entitled by law to receive the same, whether Federal, State or municipal; the intent of this agreement being that the Lessor may be able to disburse the rentals which it will receive in the annual sums as above mentioned in payment of interest upon debts and for sinking funds and for dividends upon its stock or for other distribution, without being required or finding it necessary to pay, retain or deduct any of the same for any other purpose through or by reason of any imposition or assessment by or under any laws or proceedings heretofore or hereafter made or authorized by the United States or by the State of Connecticut or by any municipality of said State.

And the Lessee covenants at its own expense to 343
maintain said demised premises and property during said term in as good order, repair and condition as the same are now, and in their present state of efficiency, an that at its own expense it will make all improvements, alterations and renewals of said demised property which in its judgment, acting in good faith, may be best adapted to safeguard and develop said property and to promote its interests and to preserve its franchises, rights and powers.

And the Lessee further covenants that at its own risk and expense it will in good faith and 344
to the best of its ability operate the Lessor's said railways, lighting and power plants and all other property leased, operated, owned or controlled by the Lessor and that it will furnish all apparatus, equipment and plant in substitution for and in addition to that hereby demised which in its judgment may be necessary or proper for such operation.

And the Lessee further covenants that at its own first cost and expense it will enlarge and extend said property within the territorial limits of the towns where said property is now located, and that it will acquire, so far as practicable, 345
necessary franchises, rights and powers in the name of the Lessor, for the purpose of enabling the Lessee to enlarge and extend, as aforesaid, and to carry on, preserve and develop the business, in such manner as shall at all times to the Lessee, acting in good faith, seem adapted to develop and safeguard the property, to promote and preserve its interests, and to extend its franchises and powers within said territorial limits.

It is hereby mutually covenanted that the Lessee may make such lawful changes and alterations

346 in such railways, lighting and power plants and their equipment and appurtenances as the Lessee shall from time to time in good faith find to be for the greatest value of the said demised property regarded as an operated whole and as a permanent source of revenue, and for the purpose of such beneficial changes or alterations may from time to time move, remove, discontinue, abandon, exchange or sell any parts of the demised premises which in its judgment shall no longer be necessary for the uses of said railways, lighting and power plants, and that the Lessor upon the written request of the Lessee will join
347 with the Lessee in any deed or conveyance and in any written request or representations to the Trustee under any mortgage of the Lessor which shall facilitate any such exchange or sale; provided, however, that no such sale or exchange shall be made in violation of the provisions of any mortgage now or hereafter existing thereon, and provided further that other similar property, of equal value to the demised premises as an operated whole shall be conveyed by the Lessee to the Lessor in lieu of any property so abandoned, sold or exchanged, and become a part of
348 the demised premises, but the obligation of the Lessor to join in such deed or conveyance shall not be dependent upon the immediate investment of the proceeds acquired as above, the Lessee hereby agreeing that all the proceeds of any such sale not required for immediate investment shall be held by it as a fund applicable only to such purposes; provided further, that the Lessee shall not, unless with the consent in writing of the Board of Directors of the Lessor, sell or abandon any line or any location or right of way in any highway or elsewhere now or at the time

possessed by the Lessor or hereafter acquired by it or by the Lessee and subject to the provisions of this lease, unless the Lessee shall, prior to such sale, have acquired and transferred to the Lessor another location or right of way or other trackage of approximately equal value to that so sold or abandoned.

And the Lessee covenants that it will save the Lessor harmless from all suits, costs, damages and expenses by reason of any act or omission of the Lessee in the use of said demised premises under this lease, and, so far as possible during the continuance of this lease, will do every act and thing that may by law be obligatory upon it or upon the Lessor in respect to the demised property and the maintenance, improvement, operation and use of such demised property and every part thereof, including franchises, and will make all returns required by the laws of the State of Connetcicut or of the United States in relation to the property hereby leased, to any public officer or legal authority, and should any returns be required by law of the Lessor, will furnish on demand all information necessary therefor.

The Lessee covenants that at the expiration of this lease, whether by lapse of time or otherwise, it will deliver to the Lessor possession of the demised property as changed, altered, added to and improved, as hereinabove provided, and that the demised property shall then be in such condition and with such equipment, materials and appurtenances as to fully fit it for the immediate use of the Lessor in the same manner as at present. It is, however, mutually understood and agreed that at the time of such delivery of possession there shall be an equitable adjustment of

352 accounts between the Lessor and Lessee, as follows: (1) The assets represented by cash on hand and choses in action, sinking fund accumulations prior to August 1, 1906, as shown in Schedule B, and the liabilities represented by choses in action shall be adjusted to be equal in net to the assets and liabilities of like character hereby demised to and to be paid by the Lessee; (2) In lieu of the personal property set out in an inventory which shall forthwith be made and agreed to in writing by representatives of the Lessor and Lessee and which shall set out all the personal property delivered by the Lessor to the Lessee
353 at the beginning of the term, the Lessee will deliver to the Lessor the same or other personal property of similar amount, character and uses appropriate for the operation of the demised railways and lighting and power plants; (3) If the Lessee shall have made additions, extensions, betterments and improvements of the demised property of a character other than those described in sentence (4) next following, at the Lessee's sole expense, over and above new investments of the proceeds derived from any insurance policies or other form of protection against fire, and over
354 and above renewals and replacements and what is obtained by exchange or with the proceeds of sales of parts of the demised property, such property shall, in case of the default of the Lessee, revert to and become the property of the Lessor, but the Lessor, upon the termination of this lease for any cause except the default of the Lessee, shall pay to the Lessee the actual value of such improvements, appraised at the time of such termination as physical property, such value to be fixed by a representative of each of the parties hereto, or in case they cannot agree upon such

value, by a third party to be chosen for that pur- 355
pose by the Chief Justice of the Supreme Court of Connecticut, upon the request of either party, but upon reasonable notice first given to such other party; (4) If the Lessee, with the written consent of the Lessor, shall have extended the mileage of the Lessor's railways by constructing tracks and appurtenances for conveying electricity to operate the same in highways or parts of highways or on private locations between the side lines of which at the execution of this lease there are no tracks, then the Lessor shall, upon the termination of this lease for any cause, either 356
pay to the Lessee the actual value of such extensions and appurtenances, appraised at the time of the termination of this lease as physical property, in the manner stated in sentence (3) next preceding, or the Lessor shall then convey to the Lessee the extensions and appurtenances defined in this sentence (4) which may have been construed, maintained or operated under franchises obtained in the name of the Lessor.

The Lessee shall have the right at any time, subject to the provisions hereof, to assign, sublet, pledge or mortgage this lease and any or all its 357
rights thereunder, provided that when such assignment, sub-lease, pledge or mortgage shall be made, the Lessee shall in writing notify the Lessor thereof specifying the date of the instrument and the name of the assignee, sub-lessee, pledgee or mortgagee, and thereupon any assignee other than a pledgee or mortgagee shall file with the Lessor its agreement to accept the provisions of such conveyance, together with all the obligations and undertakings assumed by the original Lessee regarding or affecting the assigned property, whereupon said assignee shall be entitled

358 to all the benefits conferred and be subject to all obligations imposed upon the Lessee under the terms of this instrument with the same effect as if such assignee were to the extent of the property assigned the original contracting party; provided, however, that no pledgee or mortgagee shall be obligated to perform any of the covenants of this lease unless and until such pledgee or mortgagee shall have acquired possession of the leasehold premises or shall operate or control the same; provided, further, that no such assignment, sub-lease, pledge or mortgage shall be
359 made unless The New York, New Haven and Hartford Railroad Company, mentioned in the agreement hereto appended, shall first in writing consent that the same shall be made and agree that its obligations under said agrement shall not in anywise be diminished thereby; and provided, further, that no such assignment, sub-lease, pledge or mortgage shall in any way impair or diminish the obligations of the Lessee hereunder.

It is covenanted and agreed between the Lessor and Lessee that a certain portion of the rentals hereinbefore agreed to be paid by the Lessee to the Lessor, to wit, the annual sum of six hun-
360 dred and seventy-three thousand eight hundred and eighty-two dollars ($673,882), is intended solely to provide for the payment of interest on bonds and payments into sinking fund, as set forth in said Schedule B, and that if the aggregate amount of the payments due from the Lessor for sinking fund and interest on bonds shall in any year hereafter be less than said sum above named, then and in such case the annual rentals to be paid by the Lessee to the Lessor shall be correspondingly diminished so as not to alter the amount of the balance of rental to be paid to the

Lessor for other purposes than for such interest 361
and sinking fund payments. It is further covenanted and agreed between the Lessor and the Lessee that such portion of the rentals paid to the Lessor by the Lessee under this lease as shall be applied to payments into such sinking fund, with all accumulations of interest thereon, shall create a claim of the Lessee upon the Lessor for the entire contents of the sinking fund, at the date of payment of the bonds, to be liquidated at the time when, under the provisions of said sinking fund agreement described in said Schedule B, the bonds in said sinking fund are to be 362
cancelled, and that at such time, and in connection with the delivery to the Lessee by the Lessor of new bonds in substitution for previously existing bonds of the Lessor then to be paid by the Lessee, and on condition that the Lessee shall fulfil its covenants in relation to the payment of the bonds of the Lessor then to be paid by the Lessee, the Lessor will issue and deliver to the Lessee bonds for the principal amount of said claim, which the Lessee agrees to accept in satisfaction thereof, such bonds to be of the same form and secured in the same way and to be part of the same issue as are such new bonds then to 363
be issued by the Lessee as hereinbefore provided.

The Lessee covenants that it will keep the property from time to time subject to this lease reasonably insured at the expense of the Lessee against loss or damage by fire to the extent that the property of similar companies is usually insured, in good and solvent companies—such insurance to be taken in the name of the Lessee, and the proceeds thereof when received by the Lessee to be placed in a separate fund to be applied by the Lessee solely to the rebuilding,

replacement or repair of the property damaged or destroyed whenever necessary or desirable for the operation of the leased property, or when not so necessary or desirable, then to other additions, extensions, betterments and renewals of property subject to this lease; provided, however, that the Lessee may adopt such other plan or method of protection against loss by fire, whether by the establishment of an insurance fund or otherwise, as may be approved by the Board of Directors of the Lessor. It is understood and agreed, however, that the Lessee will at all times comply with the insurance clause contained in any existing mortgages described in Schedule B or in any mortgages hereafter made by the Lessor in accordance with the provisions of this lease. In case of any failure on the part of the Lessee to keep said property so insured or protected from loss by fire, it shall be lawful for the Lessor to cause said property to be insured, and the Lessor may recover the amount of any payments of premiums for such insurance, with interest thereon from the date thereof, from the Lessee, without prejudice to any other right or remedy secured to the Lessor by this lease for breach of any covenants thereof.

The Lessor represents that the shares of stock enumerated in Schedule F have been delivered to the Colonial Trust Company, of New York City, under and subject to the provisions of a certain agreement made between the Lessor and said Trust Company, dated January 23, 1901, referred to in Schedule B, and agrees that when said shares shall be delivered back to it by said Trust Company, it will retain its ownership, possession and control of all of the same during the term of this lease, and that it will from time to time,

upon the demand of the Lessee, cause proper 367
proxies to be executed and delivered to the Lessee or to its appointees, so that any voting power vested in the Lessor as to all of said shares of stock shall be exercised by the Lessee, its successors or assigns, or such appointees. Such voting power shall at no time be given, used or exercised by the Lessee, its successors or assigns, or by such appointees, to permit or authorize any mortgage or other lien to be created upon any of the properties of the corporations whose shares of stock are referred to in this section, nor to permit the creating of any 368
floating indebtedness by any of said corporations, nor to in any way impair the title to or value of the demised property, nor to threaten its integrity, nor shall said shares be voted in any way inconsistent with the true intent and meaning of this lease. It is agreed that whenever the Board of Directors of the Lessor and the Board of Directors of the Lessee shall each by proper vote authorize the cancellation and destruction of any of said stock the same may be cancelled and destroyed.

The Lessor represents that the shares of stock of The Roton Point Improvement Company enu- 369
merated in Schedule G have been delivered to the Colonial Trust Company under and subject to the provisions of a certain mortgage between the Connecticut Railway and Lighting Company and the Colonial Trust Company, Trustee, dated January 15, 1901. The Lessor covenants that it will retain the ownership of said shares of stock during the continuance of this lease, and that it will, from time to time, cause proper proxies to be executed and delivered to the Lessee or to its

appointees so that the voting power vested in the Lessor as to all of said shares of stock shall be exercised by the Lessee, its successors or assigns, or such appointees. Such voting power shall at no time be given, used or exercised by the Lessee, its successors or assigns, or by such appointees to permit an increase in the capital stock of said company or any lien, security or charge to be created or imposed upon the property or franchises of said company, nor shall said shares be voted in any way inconsistent with the true intent and meaning of this lease; provided, however, that if the Lessee should at any time during the continuance of this lease desire that the property of said The Roton Point Improvement Company be conveyed to the Lessor, as permitted by subdivision (3) of Article I of said mortgage, the Lessee shall, through its Board of Directors, call in writing upon the Board of Directors of the Lessor to take action in the manner provided by said mortgage to cause the property of The Roton Point Improvement Company to be conveyed to the Lessor, which action the Lessor agrees to promptly take. In the event that such conveyance be made, proceedings shall be taken at once, at the sole expense of the Lessee, to dissolve said The Roton Point Improvement Company, in accordance with law. Upon such dissolution the shares of stock of said company shall be delivered to the Lessor and be by it cancelled.

If the Lessee shall at any time fail to pay the interest upon bonds and to make the sinking fund payments, as hereinbefore provided, or if the Lessee shall fail for thirty (30) days to make any quarterly payment of the balance of said rental, as stipulated in this agreement, or to pay

the taxes and charges levied upon the demised property, unless the payment of such tax or charge is resisted by legal proceedings taken before any sale or alienation of said demised premises takes place by reason of such non-payment, then and in any such case this lease shall expire and terminate at the option of the Lessor, and the Lessor may thereupon re-enter upon the demised premises as an entirety and notwithstanding any assignment, pledge or mortgage of this lease, or any rights thereunder, and the same have and possess as of its former estate, without prejudice to its right of action for arrears of rent or breach of covenant. 373 374

If the Lessee shall fail to keep and perform any other of its covenants and agreements in this lease contained, and such default shall continue for ninety (90) days after written notice thereof shall have been given by the Lessor to the Lessee, then and in any such case this lease shall expire and terminate at the option of the Lessor, unless within said period of ninety (90) days the Lessee shall deny in writing that the acts complained of constitute a default under the lease and shall request a reference of the questions in dispute to arbitration, and shall, at the same time, in writing, appoint an arbitrator on its behalf; thereupon the Lessor shall also appoint an arbitrator, and to the two so appointed the questions in dispute shall be submitted for final conclusion. If the two thus appointed cannot agree, they shall either promptly select a third person, making three arbitrators, or, if they fail to make such selection, it may be made by the Chief Justice of the Supreme Court of Connecticut, by the request of either party, upon reasonable notice 375

376 first given to such other party, and the conclusions of this arbitration shall be final and binding upon the parties as to the matters submitted. If the Lessee shall not make any request for arbitration, this lease shall, at the option of the Lessor, expire and terminate, and the Lessor may thereupon re-enter upon the demised premises as an entirety and notwithstanding any assignment, pledge or mortgage of this lease, or any rights thereunder, and the same have and possess as of its former estate, without prejudice to its right of action for arrears of rent or breach of covenant; but if the Lessee shall request such
377 arbitration, and if, upon the award of such arbitrators, the contention of the Lessor shall be sustained, then, unless the Lessee shall, within ninety (90) days thereafter, proceed to remedy such default and prosecute such remedy to completion with all reasonable despatch, the Lessor may re-enter and repossess said premises without prejudice as aforesaid.

Except as otherwise expressly provided, the rights and duties arising from this instrument shall inure to and be binding upon the respective successors and assigns of the Lessor and Lessee.

378 Schedules A, C, D, E, F, G and 1, and the inventory herein referred to shall not be attached to this lease but shall be made in duplicate and shall be marked for identification with the signatures of the presidents of both the Lessor and Lessee corporations, under the seals thereof, and one copy thereof retained by each party.

In witness whereof, the parties hereto, under the authority and direction of their respective Boards of Directors, have caused this instrument to be signed by their respective Presidents and

their corporate seals to be hereto affixed, this 19th day of December, A. D. 1906.

CONNECTICUT RAILWAY AND LIGHTING COMPANY,

By

ALDEN M. YOUNG

[SEAL] President.

THE CONSOLIDATED RAILWAY COMPANY,

By

CHARLES S. MELLEN

[SEAL] President.

Witnesses as to all signatures:

EDWARD G. BUCKLAND.

H. A. FABIAN.

STATE OF CONNECTICUT, }
County of New Haven, } ss.:

NEW HAVEN, December 19th, 1906.

Then personally appeared before me ALDEN M. YOUNG, President of the Connecticut Railway and Lighting Company, and CHARLES S. MELLEN, President of The Consolidated Railway Company, and severally acknowledged the foregoing instrument, executed by them for and in behalf of said companies and under the authority granted to them by vote of the directors of said companies, to be the free act and deed of the said Connecticut Railway and Lighting Company and said The Consolidated Railway Company.

HARRY A. FABIAN

[SEAL] Notary Public.

382 The New York, New Haven and Hartford Railroad Company, a corporation existing under the laws of the State of Connecticut, being the owner of record of nearly all the shares of the capital stock of The Consolidated Railway Company, the Lessee in the foregoing lease, and the said lease being made on the condition that the performance of the covenants therein shall be guaranteed by said The New York, New Haven and Hartford Railroad Company:

Now, therefore, for value received, and in consideration of the making of the foregoing lease,
383 said The New York, New Haven and Hartford Railroad Company guarantees that the rentals therein agreed to be paid and all the terms and conditions thereof shall be fully and faithfully paid, kept and performed by the Lessee, its successors and assigns, according to the terms and tenor thereof, and in case of default in the payment of said rentals, The New York, New Haven and Hartford Railroad Company agrees to pay the same on demand.

Said The New York, New Haven and Hartford Railroad Company further agrees that if at any
384 time hereafter it shall take an assignment to itself of the said lease, or if the same shall fail for any reason to be operative, it will forthwith be taken to have assumed the position of Lessee, and will perform all the obligations thereof with the same force and effect as if the same had been made to it as Lessee directly.

In witness whereof, The New York, New Haven and Hartford Railroad Company, under the authority and direction of its Board of Direc-

tors, has caused this instrument to be signed by 385
its President and its corporate seal to be hereto
affixed this 19th day of Dec'r A. D. 1906.

THE NEW YORK, NEW HAVEN AND
HARTFORD RAILROAD COMPANY,
By
CHARLES S. MELLEN
[SEAL] President.

Witnesses

EDWARD G. BUCKLAND. 386
H. A. FABIAN.

STATE OF CONNECTICUT,
County of New Haven, } ss.:

NEW HAVEN, December 19th, 1906.

Then personally appeared before me CHARLES
S. MELLEN, President of The New York, New
Haven and Hartford Railroad Company, and
acknowledged the foregoing instrument executed 387
by him for and in behalf of said company and
under the authority granted to him by vote of
the directors of said company, to be the free
act and deed of the said The New York, New
Haven and Hartford Railroad Company.

HARRY A. FABIAN
[SEAL] Notary Public.

Exhibit A annexed to Proof of Claim.

388

AGREEMENT

BETWEEN

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

AND

THE CONNECTICUT COMPANY

DATED FEBRUARY 28, 1910.

389

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY (hereinafter called the "Railroad Company"), a corporation organized and existing under the laws of the State of Connecticut and successor to the corporations organized prior to December 19, 1906, under the laws of the State of Connecticut and upon that date existing as such corporations under the names respectively of The Consolidated Railway Company and The New York, New Haven and Hartford Railroad Company, and THE CONNECTICUT
390 COMPANY, a corporation organized and existing under the laws of the State of Connecticut, hereby mutually agree as follows:

The Railroad Company will as of the 28th day of February, 1910, demise and sublet unto The Connecticut Company all the franchises and property leased by the Connecticut Railway and Lighting Company to The Consolidated Railway Company by an instrument dated December 19, 1906, and recorded in the office of the Secretary of State of Connecticut in Volume 7, page 140, except so much thereof as the Railroad Company

has by an agreement of even date herewith, a 391
copy of which is hereto attached as Exhibit A, agreed to assign or sublet to the Housatonic Power Company; and will include particularly in such demise and sublease all the street railways and all franchises relating to street railways demised by said lease of December 19, 1906, together with the benefit of all the covenants and agreements of Connecticut Railway and Lighting Company contained in said instrument of December 19, 1906, so far as these are necessary or convenient for the full beneficial enjoyment of the property to be thus demised. 392

The Railroad Company will also convey to The Connecticut Company as of the 28th day of February, 1910, all the franchises and property formerly belonging to The Branford Lighting and Water Company, of Branford, Connecticut, and conveyed to The Consolidated Railway Company by deed dated September 19, 1905, recorded in Branford Land Records in Volume 54, pages 420-425, except so much thereof as is agreed to be conveyed to the Housatonic Power Company by said agreement of even date herewith, hereto attached as Exhibit A; and will include particularly in such conveyance to The 393
Connecticut Company all the street railways and all franchises relating to street railways conveyed by said deed of September 19, 1905.

The Railroad Company will also sell and convey to The Connecticut Company as of February 28, 1910, all the electric railways in the State of Connecticut, which it now owns, except such as were formerly operated by steam locomotives, and except that part of the electric railway formerly belonging to the Greenwich Tramway Company lying between the west end of the

bridge over the Mianus River in the town of Greenwich and the New York State Line, and now leased to The New York and Stamford Railway Company, and except the electric railway in the town of Suffield formerly belonging to The Suffield Street railway Company, and except that part of the electric railway formerly belonging to The Worcester and Connecticut Eastern Railway Company lying between the Massachusetts State Line and a point in the town of Thompson at Station 674 + 00 as shown on tracing sheet 18 of 22, entitled "Consolidated Ry. Co. Putnam Division— Danielson to North Grosvenordale, Scale 1" 100', May, 1907, from tracings of Sanderson & Porter dated December, 1900," on file in the office of the Engineer of The Connecticut Company, said point being about one hundred feet northerly of the northerly line of the highway leading to the West Thompson railroad station; and will include in said sale and conveyance all the equipment of said electric railways.

The Railroad Company will also sell and convey to The Connecticut Company as of February 28, 1910, its electric power houses situated in the towns of Stamford and Berlin, and such other real estate belonging to the Railroad Company as is now used in the operation of the electric railways sold and is desired for such use by The Connecticut Company.

The Railroad Company will also assign to The Connecticut Company as of February 28, 1910, all its rights under the lease of The South Manchester Light, Power and Tramway Company, and all its rights under the lease of The West Shore Railway Company, whose railway is located in the towns of Orange and Milford, Connecticut, and will sell to The Connecticut

Company all the shares of the capital stock of said The West Shore Railway Company owned by the Railroad Company. 397

The Railroad Company will also, with the property to be conveyed and transferred hereunder, transfer to The Connecticut Company Four Million Seven Hundred Two Thousand Three Hundred Ninety and 64/100 Dollars ($4,702,390.64), being the sum agreed upon between the companies as a proper engineering estimate of the cost of rehabilitating the property conveyed and sublet, so as to make good the depreciation thereof existing at the time said property came into the possession of the Railroad Company. 398

The Railroad Company also hereby covenants with The Connecticut Company that having heretofore assumed all of the indebtedness secured by any lien upon any of the property above referred to as to be conveyed or sublet to The Connecticut Company, the Railroad Company will pay said indebtedness and interest thereon when due, and save The Connecticut Company harmless from loss, cost or damage arising out of any default in such payment.

The Connecticut Company agrees, in consideration of the foregoing, to pay to the Railroad Company three-fourths of the amount of rental to accrue after said 28th day of February, 1910, under said lease of the Connecticut Railway and Lighting Company of December 19, 1906, and to be paid to the Connecticut Railway and Lighting Company by the Railroad Company. 399

The Connecticut Company also agrees to perform all the lessee's obligations under said lease of December 19, 1906, affecting or connected with the property to be sublet to The Connecticut Company.

Exhibit A annexed to Proof of Claim.

400 The Connecticut Company also agrees to pay all the rental and perform all the other obligations of the lessee under the lease of The West Shore Railway Company and under the lease of The South Manchester Light, Power and Tramway Company, accruing after the said 28th day of February, 1910.

The Connecticut Company will also issue to the Railroad Company, at par, its capital stock to pay for all the property and franchises sold to it, including said rehabilitation fund and including all betterments on leased property, to the amount of Thirty-nine Million Seven Hundred
401 Twenty-five Thousand Dollars ($39,725,000).

In Witness Whereof The New York, New Haven and Hartford Railroad Company and The Connecticut Company have respectively caused these presents to be executed by their officers, thereunto duly authorized, on this 28th day of February, 1910.

Signed, sealed and delivered in presence of
W. H. ROWLAND,
402 S. SUKLOFF, JR.

THE NEW YORK, NEW HAVEN AN
HARTFORD RAILROAD COMPANY
By
C. S. MELLEN
Presiden

Attest:
JOHN G. PARKER
Secretary.

[SEAL]

W. H. ROWLAND.
S. SUKLOFF, JR.

THE CONNECTICUT COMPANY,
By
C. S. MELLEN
Presiden

Attest:
JOHN G. PARKER
Secretary.

[SEAL]

Exhibit A annexed to Proof of Claim.

SUBLEASE

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

TO

THE CONNECTICUT COMPANY

DATED FEBRUARY 28, 1910.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, (hereinafter called the "Railroad Company"), a corporation organized and existing under the laws of the State of Connecticut, and successor to the corporations organized prior to December 19, 1906, under the laws of the State of Connecticut, and upon that date existing as such corporations under the names respectively of The Consolidated Railway Company and The New York, New Haven and Hartford Railroad Company, for a valuable consideration, the receipt of which is hereby acknowledged, hereby demises and sublets unto THE CONNECTICUT COMPANY, also a corporation organized and existing under the laws of the State of Connecticut, all the franchises and property leased by the Connecticut Railway and Lighting Company to The Consolidated Railway Company by an instrument dated December 19, 1906, and recorded in the office of the Secretary of State of Connecticut, in Volume 7, page 140, except so much thereof as is assigned or sublet to the Housatonic Power Company by deed of even date herewith, a copy of which is hereto attached as Exhibit A; including particularly in this demise and sublease all the street railways and all franchises relating to street railways demised by said lease of December 19, 1906, together with the benefit of all the covenants and agreements of Connecticut Railway and Lighting Company contained in said

406 instrument of December 19, 1906, so far as these are necessary or convenient for the full benefcial enjoyment of the property hereby demised:

To Have and to Hold the premises unto The Connecticut Company, its successors and assigns, for its and their use for the remainder of the term of said lease of December 19, 1906.

The Railroad Company also covenants with The Connecticut Company, at all times during the continuance in force of this sublease, to pay to Connecticut Railway and Lighting Company, as provided in said lease, the sums therein
407 promised to be paid as rental for the property demised.

It is mutually covenanted and agreed, by and between the Railroad Company and The Connecticut Company, that this assignment and sublease shall be effectual only subject to all the provisos contained in said lease of December 19, 1906, which limit the right of the lessee under said lease to assign, sublet, pledge or mortgage said lease and any or all of its rights thereunder.

In consideration of the premises, and for the purpose of complying with the aforesaid limiting provisos of said lease dated December 19, 1906, The Connecticut Company hereby agrees to accept
408 all the provisions of this conveyance, together with all the obligations and undertakings assumed by the original lessee, regarding or affecting the property herein assigned and sublet.

For the purpose of complying with said limiting provisos of said lease dated December 19, 1906, the Railroad Company, as guarantor under said date of December 19, 1906, of the payment by the lessee of the rentals agreed to be paid by said lease of December 19, 1906, and of the performance of the terms and conditions thereof, hereby consents that this assignment and sublease shall be made, and agrees that its obligations

409

under said agreement of guaranty appended to said lease dated December 19, 1906, shall not in any wise be diminished hereby.

All the foregoing provisions of this instrument are subject to the condition that the life of this instrument may at any time be terminated by an agreement in writing of the parties hereto, whereupon all the rights of The Connecticut Company in and to the franchises and property conveyed by this instrument shall be restored to the Railroad Company and be by it possessed as fully as if this instrument had never been executed; provided, however, that a copy of such agreement between the parties hereto shall be promptly delivered to the said Connecticut Railway and Lighting Company.

410

In Witness Whereof The New York, New Haven and Hartford Railroad Company and The Connecticut Company have respectively caused these presents to be executed by their officers, thereunto duly authorized, on this 28th day of February, 1910.

igned, sealed and delivered in presence of
. C. SCHNEIDER
. F. FARRELL

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
By
E. H. McHENRY
Vice-President.

411

Attest:
ARTHUR E. CLARK
Asst. Secretary.

[SEAL]

. A. FLEMING
ICHARD J. BENNETT

THE CONNECTICUT COMPANY,
By
CALVERT TOWNLEY
Vice-President.

Attest:
ARTHUR E. CLARK
Asst. Secretary.

[SEAL]

Exhibit A annexed to Proof of Claim.

412 # AGREEMENT

BETWEEN

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

AND

HOUSATONIC POWER COMPANY

DATED FEBRUARY 28, 1910.

THE NEW YORK, NEW HAVEN AND HARTFORD
413 RAILROAD COMPANY (hereinafter called the "Railroad Company"), a corporation organized and existing under the laws of the State of Connecticut and successor to the corporations organized prior to December 19, 1906, under the laws of the State of Connecticut and upon that date existing as such corporations under the names respectively of The Consolidated Railway Company and The New York, New Haven and Hartford Railroad Company, and HOUSATONIC POWER COMPANY (hereinafter called the "Power Company"), a corporation organized and existing under the laws of the State of Connecticut, hereby
414 mutually agree as follows:

The Railroad Company will as of the 28th day of February, 1910, sell and assign to the Power Company all the franchises demised to The Consolidated Railway Company by the Connecticut Railway and Lighting Company by an instrument dated December 19, 1906, and recorded in the office of the Secretary of State of Connecticut, in Volume 7, page 140, which are necessary for or particularly connected with the generation or distribution for sale of gas or electricity within the State of Connecticut.

Exhibit A annexed to Proof of Claim.

The Railroad Company will also demise and 415
sublet to the Power Company as of said date of
February 28th, 1910, all the plants and appur-
tenances demised and leased by the Connecticut
Railway and Lighting Company to The Consoli-
dated Railway Company by said instrument, for
the generation or distribution for sale of gas or
electricity within the State of Connecticut, in-
cluding all electric power houses and substations
of said Connecticut Railway and Lighting Com-
pany except the power stations in the town of
Bridgeport and in the town of Huntington, and
further including all poles and conduits of said, 416
Company carrying wires used as electric con-
ductors except such as have trolley wires, trolley
direct current feed wires or trolley brackets at-
tached to them, and all wires of said company ex-
cept trolley and span wires and trolley direct cur-
rent feed wires, and including also plants for the
generation, distribution and sale of gas of said
Connecticut Railway and Lighting Company in the
towns of Norwalk, Greenwich and Naugatuck, and
including also all the rights of the Connecticut
Railway and Lighting Company under its agree-
ment dated the third day of January, 1901, with
the United Gas Improvement Company, a cor- 417
poration of the State of Pennsylvania, relating to
the Waterbury Gas Light Company, as set forth
in Schedule I referred to in said instrument of
December 19, 1906, together with the benefit of all
the covenants and agreements of Connecticut
Railway and Lighting Company contained in said
instrument of December 19, 1906, so far as these
are necessary or convenient for the full and
beneficial enjoyment of the property to be thus
demised.

The Railroad Company will also assign to the
Power Company as of February 28, 1910, all the

418 interest of the Railroad Company in the franchises of the Waterbury Gas Light Company and in the property of said Waterbury Gas Light Company and in any profits or income arising out of the exercise of said franchises and the use of said property, and particularly all the rights of the Railroad Company under Paragraphs 2, 3, 4 and 5 of an agreement between The Consolidated Railway Company and the United Gas Improvement Company, a corporation of the State of Pennsylvania, dated December 19, 1906, a copy of which is hereto annexed.

419 The Railroad Company will also convey to the Power Company all the real estate in the town of Suffield conveyed to the Railroad Company by The Village Water Company of Suffield by deed dated January 31, 1908, and recorded in the Land Records of the Town of Suffield in Volume 42 at pages 322-323, and also all the water and electric light plants now constructed and in operation in the town of Suffield, Connecticut, including all lines of poles and wires, machinery, sub-stations, transformers and other equipment situated in the town of Suffield in the State of Connecticut and used in connection with the operation of said
420 water and electric light plants, together with the right to maintain and operate said plants and to exercise the powers and franchises of the grantor necessary or convenient for the maintenance and operation of said plants, the object and intent being to convey to the Power Company the rights, powers, privileges and franchises formerly enjoyed by The Village Water Company of Suffield.

The Railroad Company will also convey to the Power Company as of February 28, 1910, all the franchises of the Railroad Company formerly belonging to The Branford Lighting and Water Company, of Branford, Connecticut, and con-

veyed to The Consolidated Railway Company by 421
deed dated September 19, 1905, recorded in the Branford Land Records in Volume 54, at pages 420-425, which relate to the business of furnishing water and electric light to the public, and all the property of the Railroad Company situated in the town of Branford and used in connection with the business of furnishing water and electric light and power to the public, including the Branford electric power house and also all poles and conduits situated within the town of Branford carrying wires used in the conduction of electricity, together with such wires, excepting, however, trolley wires and trolley direct current feed 422
wires and such poles as have trolley wires, trolley direct current feed wires or trolley brackets attached to them.

The Railroad Company will also with said property transfer to the Power Company five hundred two thousand seven hundred seventy-seven and 62/100 dollars ($502,777.62), being the sum agreed upon between the companies as a proper engineering estimate of the cost of rehabilitating the property conveyed and sublet, so as to make good the depreciation thereof existing at the time said property came into the posses- 423
sion of the Railroad Company.

The Railroad Company also hereby covenants with the Power Company that having heretofore assumed all of the indebtedness secured by any lien upon any of the property above described as to be assigned, conveyed or sublet to the Power Company, the Railroad Company will pay said indebtedness and interest thereon when due, and save the Power Company harmless from loss, cost or damage arising out of any default in such payment.

424 The Power Company agrees, in consideration of the foregoing, to pay to the Railroad Company one-quarter of the amount of rental to accrue after said 28th day of February, 1910, under said lease of the Connecticut Railway and Lighting Company of December 19, 1906, and to be paid to the Connecticut Railway and Lighting Company by the Railroad Company.

The Power Company also agrees to perform all the lessee's obligations under said lease of December 19, 1906, affecting or connected with the property to be sublet to the Power Company.

The Power Company will also issue to the
425 Railroad Company, at par, its capital stock to pay for all the franchises acquired by it in accordance with the terms of this agreement, to the amount of Two Million Dollars.

In Witness Whereof The New York, New Haven and Hartford Railroad Company and Housatonic Power Company have respectively caused these presents to be executed by their officers, thereunto duly authorized, on this 28th day of February, 1910.

Signed, sealed and delivered in presence of
426 W. H. ROWLAND
S. SUKLOFF JR.

THE NEW YORK, NEW HAVEN
HARTFORD RAILROAD COMPA
By
C. S. MELLEN [S
Presi

Attest:
JOHN G. PARKER
Secretary.

W. H. ROWLAND
S. SUKLOFF JR.

HOUSATONIC POWER COMPANY,
By
C. S. MELLEN [S
Presi

Attest:
JOHN G. PARKER

(Acknowledgment omitted.)

Exhibit A annexed to Proof of Claim.

SUBLEASE

427

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

TO

HOUSATONIC POWER COMPANY

DATED FEBRUARY 28, 1910.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY (hereinafter called the "Railroad Company"), a corporation organized and existing under the laws of the State of Connecticut, and successor to the corporations organized 428
prior to December 19, 1906, under the laws of the State of Connecticut, and upon that date existing as such corporations under the names respectively of The Consolidated Railway Company and The New York, New Haven and Hartford Railroad Company, for a valuable consideration, the receipt of which is hereby acknowledged, hereby sells and assigns unto the HOUSATONIC POWER COMPANY (hereinafter called the "Power Company"), also a corporation organized and existing under the laws of the State of Connecticut, all the franchises demised to The Consolidated Railway Company by the Con- 429
necticut Railway and Lighting Company by an instrument dated December 19, 1906, and recorded in the office of the Secretary of State of Connecticut in Volume 7, page 140, which are necessary for or particularly connected with the generation or distribution for sale of gas or electricity within the State of Connecticut:

To HAVE AND TO HOLD the premises unto the said HOUSATONIC POWER COMPANY, its successors and assigns, to its and their use.

430 The Railroad Company further, for a valuable consideration, the receipt of which is hereby acknowledged, demises and sublets unto the said power Company all the plants and appurtenances demised and leased by the Connecticut Railway and Lighting Company to The Consolidated Railway Company by said instrument, for the generation or distribution for sale of gas or electricity within the State of Connecticut, including all electric power houses and sub-stations of said Connecticut Railway and Lighting Company, except the power stations in the town of Bridgeport and in the town of Huntington, and further
431 including all poles and conduits of said company carrying wires used as electric conductors, except such as have trolley wires, trolley direct current feed wires or trolley brackets attached to them, and all wires of said company except trolley and span wires and trolley direct current feed wires, and including also plants for the generation, distribution and sale of gas, of said Connecticut Railway and Lighting Company, in the towns of Naugatuck, Greenwich and Norwalk, and including also all the rights of the Connecticut Railway and Lighting Company under its agreement dated the third day of January, 1901,
432 with the United Gas Improvement Company, a corporation of Pennsylvania, relating to the Waterbury Gas Light Company, as set forth in Schedule I referred to in said instrument of December 19, 1906; together with the benefit of all the covenants and agreements of Connecticut Railway and Lighting Company contained in said instrument of December 19, 1906, so far as these are necessary or convenient for the full beneficial enjoyment of the property hereby demised:

To Have and to Hold the property thus demised unto the said Housatonic Power Com-

PANY, its successors and assigns, for its and their 433
use for the remainder of the term of said lease of December 19, 1906.

The Railroad Company also covenants with the Power Company, at all times during the continuance in force of this sublease, to pay to Connecticut Railway and Lighting Company, as provided in said lease, the sums therein promised to be paid as rental for the property thereby demised.

It is mutually covenanted and agreed, by and between the Railroad Company and the Power Company, that this assignment and sublease shall be effectual only subject to all the provisos 434
contained in said lease of December 19, 1906, limiting the right of the lessee under said lease to assign, sublet, pledge or mortgage said lease and any or all of its rights thereunder.

In consideration of the premises, and for the purpose of complying with the aforesaid limiting provisos of said lease dated December 19, 1906, the Power Company hereby agrees to accept all the provisions of this conveyance, together with all the obligations and undertakings assumed by the original lessee, regarding or affecting the property herein assigned and sublet.

For the purpose of complying with said limit- 435
ing provisos of said lease dated December 19, 1906, the Railroad Company, as guarantor under said date of December 19, 1906, of the payment by the lessee of the rentals agreed to be paid by said lease of December 19, 1906, and of the performance of the terms and conditions thereof, hereby consents that this assignment and sublease shall be made, and agrees that its obligations under said agreement of guaranty appended to said lease dated December 19, 1906, shall not in any wise be diminished hereby.

436 All the foregoing provisions of this instrument are subject to the condition that the life of this instrument may at any time be terminated by an agreement in writing of the parties hereto, whereupon all the rights of the Power Company in and to the franchises and property conveyed by this instrument shall be restored to the Railroad Company and be by it possessed as fully as if this instrument had never been executed; provided, however, that a copy of such agreement between the parties hereto shall be promptly delivered to the said Connecticut Railway and Lighting Company.

437 *In Witness Whereof* The New York, New Haven and Hartford Railroad Company and Housatonic Power Company have respectively caused these presents to be executed by their officers, thereunto duly authorized, on this 28th day of February, 1910.

Signed, sealed and delivered in presence of
R. C. SCHNEIDER
438 H. F. FARRELL

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY
By
E. H. McHENRY [SEAL]
Vice-President.

Attest:
ARTHUR E. CLARK
Assist. Secretary.

J. A. FLEMING
RICHARD J. BENNETT

HOUSATONIC POWER COMPANY,
by
CALVERT TOWNLEY [SEAL]
Vice-President.

Attest:
ARTHUR E. CLARK
Asst. Secretary.

(Acknowledgement omitted.)

Exhibit A annexed to Proof of Claim.

SUBLEASE

489

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

AND

HOUSATONIC POWER COMPANY

TO

THE UNITED ELECTRIC LIGHT AND WATER COMPANY

440

DATED DECEMBER 30, 1911.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, hereinafter called the New Haven Company, as successor to The Consolidated Railway Company, and the HOUSATONIC POWER COMPANY, hereinafter called the Housatonic Company (both of said Companies, by reason of their respective interests in the property hereinafter referred to, for purposes of convenience being collectively called the Sublessors), 441
hereby demise and sublet unto THE UNITED ELECTRIC LIGHT AND WATER COMPANY, hereinafter called the Sublessee, and to its successors and assigns, both the Sublessors and the Sublessee being corporations created by the General Assembly and existing under the laws of the State of Connecticut, all of the franchises, plants and appurtenances (except those of The Waterbury Gas Light Company), demised and leased by The

442 Connecticut Railway and Lighting Company, as Lessor, to The Consolidated Railway Company, as Lessee, by lease dated December 19, 1906, and recorded in the office of the Secretary of State of Connecticut in Volume VII, page 140 (hereinafter referred to as the Lease), and agreed to be sold, assigned, demised and sublet by the New Haven Company to the Housatonic Company by written instrument dated February 28, 1910, which are necessary for or particularly connected with the generation, distribution, transmission and sale of electricity, except for rail-
448 way purposes, and the generation, distribution, transmission and sale of gas throughout the territory covered by the charter of said Connecticut Railway and Lighting Company within the State of Connecticut, the said franchises, plants and appurtenances being hereinafter more particularly described and, for purposes of convenience, collectively referred to as "the leased electric and gas properties;" together with the right to demand and receive, for the Sublessee's own use and benefit, all tolls, rents, revenues, income and profits of the demised premises, including also all of the right, title and interest of the Sub-
444 lessors in, to, or under any grants, orders, decisions, decrees, judgments or permits of any governmental or municipal authority, and in, to, or under any franchises, privileges, licenses, permits, leases, contracts, covenants, declarations of trust and agreements relating to, or in any way affecting "the leased electric and gas properties," and including all of the right, title and interest of the Sublessors in, or to any property or assets of any description appurtenant to "the leased electric and gas properties," and whether real or personal, and whether in possession or

action, and however described and wherever 445
situated, other than the sinking fund referred to in Schedule B of said Lease and such other property and assets as are hereinbefore or hereinafter particularly excepted, reserving only to the Sublessors the rental hereinafter specified.

TO HAVE AND TO HOLD "the leased electric and gas properties" unto said The United Electric Light and Water Company, its successors and assigns, to its and their use for the term ending on the 31st day of July, 2905, inclusive of that day.

The Sublessors represent, covenant and agree: 446

I.—That the property which they hereby demise and sublet, and for which the rental hereinafter specified is agreed to be paid and which is herein referred to as "the leased electric and gas properties" is the following:

(a) the system for the distribution of electrical energy for other than railway purposes as hereinafter defined in the Towns of Waterbury, Naugatuck, Watertown and Cheshire; comprising all poles used only for light, heat or power purposes, overhead 447
wires, a system of underground conduits and cables, meters, transformers and other appliances, substation number 2, the storage battery and battery house adjacent thereto, and the transmission line between substation number 1 and substation number 2, but not including power stations, any other substations or transmission lines or poles or wires used wholly or partially for railway purposes;

448 (b) the system for the distribution of electrical energy for other than railway purposes as hereinafter defined in the Towns of New Britain, Newington, Berlin, Plainville and Southington; comprising poles used only for light, heat or power purposes, overhead wires and underground cable system installed in conduits owned by the City of New Britain, meters, transformers and other appliances, but not including power station, substation, transmission lines or poles or wires used wholly or partially for railway
449 purposes;

(c) the system for the distribution of electrical energy for other than railway purposes as hereinafter defined in the Towns of Norwalk, Wilton and New Canaan; comprising poles used only for light, heat or power purposes, wires, meters, transformers and other appliances, but not including power station, substation, transmission lines or poles or wires used wholly or partially for railway purposes;

(d) the system for the distribution of electrical energy for other than railway purposes
450 as hereinafter defined in the Town of Greenwich; comprising poles used only for light, heat or power purposes, wires, meters and other appliances, but not including power station, substation, transmission lines or poles or wires used wholly or partially for railway purposes;

(e) the gas generating plant and distributing system in the Town of Norwalk;

(f) the uncompleted gas generating plant, 451
and distributing system in the Town of Greenwich;

(g) the gas distributing system in the Borough of Naugatuck, including gas holder and so much of the gas main from Naugatuck to Waterbury as does not belong to The Waterbury Gas Light Company;

(h) All the rights, powers, privileges and franchises granted to and conferred on the Lessor by the General Assembly of the State of Connecticut at its session of 1911, to manufacture or otherwise obtain and to 452
tribute, furnish and sell gas, and to produce, generate and manufacture, distribute, furnish and sell electricity in the Town of Weston.

(i) also all papers, documents, maps, surveys, certificates, deeds and conveyances or certified copies thereof relating to "the leased electric and gas properties" received by the New Haven Company from the Lessor under the said Lease showing the nature of said Lessor's right, title and interest in or to the property hereby demised, or any part 453
thereof; provided, however, that the said Lessor shall at all reasonable times either have access to the original maps, deeds and other evidences of title, or, at the option of the Sublessee, shall be furnished with accurate and authentic copies of the same;

(k) also all papers, documents, maps, surveys, certificates, deeds and conveyances or certified copies thereof relating to "the leased electric and gas properties" received

454 by the Sublessors from any source, showing the nature of said Sublessor's right, title and interest in or to the property hereby demised or any part thereof; provided, however, that the Sublessee shall at all reasonable times have access to the original maps, deeds and other evidences of title.

A more particular description of the distributing systems for electrical energy referred to in the clauses (a), (b), (c) and (d) of this Paragraph I and of the gas generating plants and distributing systems referred to in the clauses (e), 455 (f) and (g) and a list of the papers, documents, maps, surveys, certificates, deeds and conveyances referred to in the clauses (i) and (k) is to be set forth in the inventory to be made pursuant to the provisions of Paragraph B and annexed hereto.

II.—That the Sublessors have not, since the date of said Lease, granted or conveyed away any of the franchises granted by the General Assembly of the State of Connecticut which are necessary for or particularly connected with "the 456 leased electric and gas properties."

III.—That the Sublessors have good right to make this sublease in manner and form as herein written, and the Sublessee covenants with the Sublessors, their sucessors and assigns, that it has good right to make and take this sublease in manner and form as herein written.

That there are no existing mortgages upon the demised premises other than those of the Connecticut Railway and Lighting Company and the Connecticut Lighting and Power Company

enumerated in Schedule B of said Lease, subject 457
to which said mortgages "the leased electric and gas properties" are demised by the Sublessors to the Sublessee. The New Haven Company hereby covenants to indemnify and hold harmless the Sublessee against the enforcement or foreclosure of said mortgages. If it shall be ascertained that there are liens or encumbrances on said demised premises other than said mortgages, representing claims accruing between August 1, 1906, and September 30, 1911, including both dates, the Sublessors covenant to indemnify the Sublessee against all loss, cost or damage arising there- 458
from.

IV.—That the Sublessee, its successors and assigns, upon payment in the manner herein provided of the rent herein reserved and agreed to be paid by the Sublessee and upon the keeping and performing of the covenants and agreements herein provided to be kept and performed by the Sublessee, shall have the uninterrupted possession, use, control and management of "the leased electric and gas properties," and all tolls, rents, revenues, income, profits and benefit of the demised premises in its quiet, peaceful possession 459
and enjoyment without detriment, hindrance, interruption or molestation from said Sublessors, their successors and assigns, for and during the term of this sublease, subject, however, to the mortgages described in Schedule B of said Lease and to such mortgages as shall hereafter be made in accordance with the provisions of said Lease.

V.—That the Sublessee shall have the benefit of the following covenants of the Lessor under said Lease in so far as the same shall affect "the

leased electric and gas properties," upon performance of the acts therein required to be performed by the Lessee:

"That it will, during the continuance of this "Lease, maintain its existence and organization "as a corporation in due form of law, and for "that purpose will hold all necessary meetings, "elect all necessary officers, and make all neces- "sary records, reports, transfers and re-issues of "stock certificates at its own expense and that "it will from time to time, and at all times when "thereto required by said Lessee, do and per- "form, at the expense of the Lessee, all such "other acts, matters and things consistent with "the rights of said Lessor under this Lease as "shall be necessary in the opinion and judgment "of the said Lessee for the due preservation and "protection of all the estate, property, rights, "franchises and interests herein demised to the "Lessee, and to carry into full effect the true in- "tent and meaning of this Lease, and that in "default thereof the same may be done by the "said Lessee, its successors or assigns, or its or "their lawful agents in the name and as the act "of the said Lessor;

"The Lessor further covenants that it will, "from time to time, if so requested by the Lessee, "proceed to take, appropriate and condemn in "due form of law such real estate as the con- "venient exercise of the demised franchises or "operation of the demised railways, lighting and "power plants and other property, or as the "orders of any public, governmental or munic- "ipal authority may render necessary or desir- "able in the opinion of the Lessee, the Lessee, "however, advancing and paying all the expense "therefor incurred, including the legal expenses;

"The Lessor further covenants that the Lessee 463
"may use the Lessor's name in prosecuting or de-
"fending any suits or proceedings so far as the
"Lessee may deem necessary for the use, quiet
"enjoyment or protection of the demised
"premises or to protect itself against unlawful
"exactions or demands by or under any public
"authority, but at the sole expense of the Lessee,
"saving the Lessor harmless from all loss, costs
"or damages thereby accruing;

"The Lessor further covenants that it will
"from time to time, and at any time hereafter, at
"the request of the Lessee, execute and deliver 464
"all other and further specific or general
"assignments and transfers, conveyances, instru-
"ments and assurances in the law for the further,
"better or more perfect assuring and vesting or
"confirming in and to the Lessee the demised
"premises according to the true intent and
"meaning of these presents as by the Lessee shall
"or may be reasonably advised or required, but
"it is expressly covenanted that all such assur-
"ances, transfers and conveyances shall only be
"for the term and subject to the provisions of
"this Lease;

"The Lessor further covenants • • • that 465
"during the continuance of this Lease the Lessor
"will not, without the written consent of the
"Lessee, except to refund or discharge its
"present funded debt or any debt incurred in
"accordance with the provisions of this Lease,
"extend the time of payment of any bonds out-
"standing at any time, or issue any other bonds,
"notes, obligations or evidences of indebtedness
"than those now outstanding, or call any bonds
"for purchase or payment; and that the Lessor,
"during the continuance in force of this Lease,

466 "will not violate any of the covenants, agree-
"ments or conditions either of any of the instru-
"ments referred to in Schedule B, or of any mort-
"gages hereafter executed by the Lessor, by
"doing or omitting anything which in accordance
"with the true intent and meaning of this Lease
"ought not to be done or omitted by the Lessor."

• • • • •

"It is hereby mutually covenanted that the
"Lessee may make such lawful changes and
"alterations in such • • • lighting and power
"plants and their equipment and appurtenances
467 "as the Lessee shall from time to time in good
"faith find to be for the greatest value of the
"said demised property regarded as an operated
"whole and as a permanent source of revenue,
"and, for the purpose of such beneficial changes
"or alterations, may from time to time move, re-
"move, discontinue, abandon, exchange or sell
"any parts of the demised premises which in its
"judgment shall no longer be necessary for the
"uses of said • • • lighting and power
"plants, and that the Lessor upon the written
"request of the Lessee will join with the Lessee
"in any deed or conveyance and in any written
468 "request or representations to the trustee under
"any mortgage of the Lessor which shall facili-
"tate any such exchange or sale; provided, how-
"ever, that no such sale or exchange shall be
"made in violation of the provisions of any mort-
"gage now or hereafter existing thereon, and pro-
"vided, further, that other similar property, of
"equal value to the demised premises as an oper-
"ated whole shall be conveyed by the Lessee to
"the Lessor in lieu of any property so abandoned,
"sold or exchanged, and become a part of the de-
"mised premises, but the obligation of the Lessor

"to join in such deed or conveyance shall not be 469
"dependent upon the immediate investment of the
"proceeds acquired as above, the Lessee hereby
"agreeing that all the proceeds of any such sale
"not required for immediate investment shall be
"held by it as a fund applicable only to such pur-
"poses; provided, further, that the Lessee shall
"not, unless with the consent in writing of the
"Board of Directors of the Lessor, sell or
"abandon any line or any location or right of
"way in any highway or elsewhere now or at the
"time possessed by the Lessor or hereafter ac-
"quired by it or by the Lessee and subject to the 470
"provisions of this lease, unless the Lessee shall,
"prior to such sale, have acquired and trans-
"ferred to the Lessor another location or right
"of way * * * of approximately equal value
"to that so sold or abandoned."

The Sublessors hereby nominate and irrevocably appoint the Sublessees as their lawful agent during the term of this sublease to secure the performance of the foregoing covenants of the Lessor, the Sublessee assuming all cost and expense thereby incurred.

If any parts of the said "leased electric and gas properties" shall, at any time during the 471
term of this sublease, be sold as aforesaid or taken by eminent domain pursuant to law, the New Haven Company shall exercise and enforce its right as Lessee under said Lease to obtain the proceeds of sale or compensation for the property taken and upon receipt thereof shall either pay the same over to the Sublessee or retain such proceeds or compensation, in which latter case it shall, from the date of the surrender by the Sublessee of the property sold or taken, reduce the rent herein reserved by a sum

472 equal to five per cent. on the amount of such proceeds or compensation.

VI.—That the Sublessee shall have the right at any time, subject to the provisions of said Lease, to assign, sublet, pledge or mortgage this sublease and any or all of its rights thereunder, provided that when such assignment, sublease, pledge or mortgage shall be made, the Sublessee shall in writing notify the Sublessors thereof specifying the date of the instrument and the name of the assignee, sublessee, pledgee or mortgagee, and thereupon any assignee other than a pledgee or
478 mortgagee shall file with the Lessor under said Lease its agreement to accept the provisions of such conveyance, together with all the obligations and undertakings assumed by the orignal Lessee regarding or affecting the assigned property, whereupon said assignee shall be entitled to all the benefits conferred and be subject to all obligations imposed upon the said Lessee under the terms of said Lease with the same effect as if such assignee were, to the extent of the property assigned, the original contracting party; provided, however, that no pledgee or mortgagee
474 shall be obligated to perform any of the covenants of said Lease unless and until such pledgee or mortgagee shall have acquired possession of the assigned property or shall operate or control the same; provided, further, that no such assignment, sublease, pledge or mortgage shall be made unless the Sublessors shall first in writing consent that the same shall be made.

VII.—That the voting power as to all of the shares of stock enumerated in Schedule F annexed to said Lease and by said Lease provided to be exercised by the Lessee, its successors or

assigns, or its appointees, shall at no time be 475
given, used or exercised by the New Haven Company, by its successors or assigns, or by its appointees, to permit or authorize any mortgage or other lien to be created upon any of "the leased electric and gas properties" originally owned by the corporations whose shares of stock are enumerated in said Schedule F, nor to permit the creating of any floating indebtedness by any of such corporations, nor to in any way impair the title to, or the value of the said "leased electric and gas properties," nor to threaten their integrity, nor shall said shares be voted in any way 476
inconsistent with the true intent and meaning of this sublease.

VIII.—The Sublessors shall continuously furnish and sell to the Sublessee and the Sublessee shall take and pay for electrical energy for the period, at the prices, and upon the conditions, regulations and restrictions contained in Schedule 1.

IX.—In consideration of the mutual covenants contained herein the Sublessors agree that they will not enter into competition with the Sublessee for the commercial sale of electricity or gas for 477
light, heat and power purposes in the territory covered by the franchises hereby demised, and the Sublessee agrees that it will not enter into competition with the Sublessors in the business of transportation in said territory; but the Sublessors reserve the right to furnish electrical energy for heat, light and power required for railway purposes, viz.: for cars, signals, buildings, parks and yards belonging to or operated by any transportation company in said territory.

478 X.—The New Haven Company agrees to indemnify the Sublessee against any loss or damage sustained by it in connection with the properties and franchises hereby demised by reason of any default of the New Haven Company under said Lease.

XI.—The Housatonic Company agrees that the Sublessee and companies owned or controlled by it, other than companies authorized to engage in transportation, shall have the right during the term of this sublease, to occupy with wires and attachments any and all of its poles and under-
479 ground conduits now or hereafter installed, located within the territory covered by the rights hereby demised, except poles and underground conduits carrying wires from its power houses to any substations. And The Connecticut Company, a corporation existing under the laws of the State of Connecticut, agrees that the Sublessee and such other owned or controlled companies shall have the right during the term of this sublease to a similar occupancy of any and all of its poles and underground conduits now or hereafter installed carrying its feeder wires
480 or supporting its trolley wires within said territory. And the Sublessee agrees that the Housatonic Company and The Connecticut Company and companies controlled by them, or either of them, and authorized to engage in transportation, shall each have a similar right to occupy any and all the poles and underground conduits which are herein demised to the Sublessee and any and all poles and underground conduits hereafter installed by it within said territory. The poles and underground conduits now installed and herein demised are more particularly described in the

inventory hereinafter in Paragraph B referred to. The rights conferred by this paragraph shall be exercised by the parties named therein in accordance with the terms and conditions and under the regulations and restrictions contained in Schedule 2. 481

IN CONSIDERATION of the premises, the Sublessee hereby covenants and promises for itself, its successors and assigns, as follows:

(A) To pay to the Sublessors as rental for the demised property the annual sum of Three Hundred Sixty-Five Thousand Dollars ($365,000). 482
Said rental shall be payable in equal monthly payments, viz., on the fifteenth day following the last day of each month during said term, to the New Haven Company, or its order, at its principal office in the City of New Haven, State of Connecticut, or in lieu thereof at any other one place it may designate within the United States upon not less than thirty days' notice in writing of such designation to the Sublessee.

(B) That an inventory shall be made by representatives of the parties hereto and signed by their respective Presidents or one of their Vice-Presidents of (1) all uncompleted contracts for the maintenance, repair, renewal, extension, improvement, and betterment, or for additions to "the leased electric and gas properties"; (2) all materials and supplies for the operation and maintenance of "the leased electric and gas properties" which shall be on hand and unused at the date of the transfer of possession of the said properties, and of the fair value thereof; (3) all such materials and supplies ordered but not received on said date; (4) all contracts for the 483

484 sale of electric current and gas for light, heat and power; (5) of all poles and wires, cables and appliances, gas plants and appurtenances and documents referred to in Paragraph I hereof; and (6) of all personal property other than said materials and supplies, delivered by the Sublessors to the Sublessee and of the fair value thereof.

Such inventory shall be annexed to this sublease although the same may not have been completed at the time of the execution hereof.

All liabilities accrued under contracts referred to in subdivision (1) of this Paragraph (B) for
485 work performed prior to October 1, 1911, shall be paid by the Sublessors, and all liabilities accrued for work performed after September 30, 1911, shall be paid by the Sublessee.

That all materials and supplies received between the close of business on September 30, 1911, and the date of the transfer of possession of "the leased electric and gas properties" shall be paid for by the Sublessors; and all materials and supplies actually used in the maintenance and operation of "the leased electric and gas properties" between the close of business on Sep-
486 tember 30, 1911, and such date of transfer of possession shall be charged to the Sublessee at cost price; all materials and supplies ordered but not received at the date of such transfer of possession shall be paid for by the Sublessee at the prices agreed to be paid therefor by the Sublessors.

That all of the tolls, rents, revenues, income and profits derived from the operation of "the leased electric and gas properties" prior to October 1, 1911, but not paid or collected until after that date shall, when received, be accounted

for by the Sublessee and paid over to the Sub- 487
lessors.

That all liabilities arising out of the maintenance and operation of "the leased electric and gas properties" which have become due and payable before October 1, 1911, shall be borne and paid by the Sublessors; all such liabilities accruing on and after said date shall be borne and paid by the Sublessee.

(C) To perform all obligations for the supply of gas and electricity and pay all indebtedness and liabilities arising from the operation, maintenance and construction of "the leased electric 488
and gas properties" since September 30, 1911, whether the same be absolute or contingent, as the same shall, from time to time, fall due or be established, except as hereinbefore in Paragraph (B) provided; it being understood and agreed that the Sublessors will assume and pay all liabilities existing prior to October 1, 1911, for injuries to, or for the death of persons, and for damages to property as the same shall be established from time to time hereafter, and will defend at its own expense all actions now pending or hereafter brought against the Lessees or the 489
Lessor under said Lease, on account of claims for such liabilities.

(D) That the Sublessee shall from time to time during the continuance of this sublease punctually pay all taxes, ordinary and extraordinary of every nature and description, which may be lawfully imposed or assessed in any way upon the "leased electric and gas properties" in excess of the annual sum of $15,000; also all taxes upon any additions thereto and extensions thereof which shall be made by the Sublessee; it being

490 understood and agreed that toward the payment of all taxes which the New Haven Company was liable to pay on the said "leased electric and gas properties" under said Lease on September 30th, 1911, said Company accepts the sum of $15,000 out of the annual rent herein reserved as the contribution to such taxes properly payable by the Sublessee.

(E) At its own expense to maintain "the leased electric and gas properties" during the term in as good order, repair and condition as the same are now, and in their present state of
491 efficiency, and at its own expense to make all improvements, alterations and renewals of said demised property which in the judgment of the Sublessee, acting in good faith, may be best adapted to safeguard and develop the properties and to promote their interests and to preserve their franchises, rights and powers.

(F) At its own risk and expense that it will in good faith and to the best of its ability operate the said "leased electric and gas properties", and that it will furnish alll apparatus, equipment and plant in substitution for and in addition to
492 that hereby demised which in the judgment of the Sublessee may be necessary or proper for such operation.

(G) That at its own cost and expense, it will enlarge and extend said "leased electric and gas properties" within the territorial limits of the towns where said properties are now located, and that it will acquire, so far as practicable, necessary franchises, rights and powers in the name of the Lessor under said Lease, for the purpose of enabling the Sublessee to enlarge and extend, as aforesaid, and to carry on, preserve and de-

velop the business, in such manner as shall at all 493
times to the Sublessee, acting in good faith, seem adapted to develop and safeguard the properties, to promote and preserve their interests, and to extend their franchises and powers within said territorial limits.

(H) That it will save the Sublessors harmless from all suits, costs, damages and expenses by reason of any act or omission of the Sublessee in the use of said demised premises under this sublease, and, so far as possible, during the continuance of this sublease, will do every act and thing that may by law be obligatory upon them or 494
upon the Lessor under said Lease, in respect to the demised property and the maintenance, improvement, operation, and use of such demised property and every part thereof, including franchises, and will make all returns required by the laws of the State of Connecticut or of the United States in relation to the property hereby subleased, to any public officer or legal authority, and should any such return be required by law from the Sublessors or from the Lessor under said Lease, will furnish on demand all information necessary therefor. 495

(J) That at the expiration of this sublease, whether by lapse of time or otherwise, it will deliver to the Sublessors or upon their request in writing to the Lessor under said Lease, possession of the demised property as changed, altered, added to and improved, as hereinabove provided, and that the demised property shall then be in such condition and with such equipment, materials and appurtenances as to fully fit it for immediate use. It is, however, mutually under-

stood and agreed that at the time of such delivery of possession, there shall be an equitable adjustment of accounts between the Sublessors and Sublessee thereunder, as follows: (1) in lieu of the personal property set out in the inventory made and agreed to in writing by representatives of the Sublessors and Sublessee under subdivisions (2) and (6) of Paragraph B of this sublease setting out all the personal property delivered by said Sublessors to said Sublessee at the beginning of the term under this sublease, the Sublessee will deliver to the Sublessors the same or other personal property of similar amount, value, character and uses, appropriate for the operation of "the leased electric and gas properties"; (2) if the Sublessee shall have made additions, extensions, betterments and improvements of the property demised at the said Sublessee's sole expense, over and above new investments of the proceeds derived from any insurance policies or other form of protection against fire, and over and above renewals and replacements and what is obtained by exchange or with the proceeds of sales of parts of the demised property, such property shall, in case of the default of the said Sublessee, revert to and become the property of the Sublessors, but the Sublessors, upon the termination of this sublease for any cause except the default of the Sublessee, shall pay to the Sublessee the actual value of such improvements, appraised at the time of such termination as physical property, such value to be fixed by a representative of the Sublessors and by a representative of the Sublessee, or in case they cannot agree upon such value, by a third party to be chosen for that purpose by the Chief Justice of the Supreme Court of Connecticut upon the re-

quest of either party, but upon reasonable notice 499
first given to such other party.

(K) That it will keep the property from time to time subject to this sublease reasonably insured in good and solvent companies at the expense of the Sublessee against loss or damage by fire to the extent that the property of similar companies is usually insured,—such insurance to be taken in the name of the Sublessee, and the proceeds thereof when received by the Sublessee to be placed in a separate fund to be applied by the Sublessee solely to the rebuilding, replacement or repair of the property damaged or 500
destroyed whenever necessary or desirable for the operation of "the leased electric and gas properties," or when not so necessary or desirable, then to additions, extensions and betterments of other property subject to this sublease; provided, however, that the Sublessee may adopt such other plan or method of protection against loss by fire, whether by the establishment of an insurance fund or otherwise, as may be approved by the Board of Directors of the Sublessors and of the Lessor under said Lease. It is understood and agreed, however, that the Sublessee will at all 501
times comply with the insurance clause contained in any existing mortgages described in Schedule B annexed to said Lease, or in any made by the Lessor in accordance with the provisions of the Lease.

In case of any failure on the part of the Sublessee to keep said property so insured or protected from loss by fire, it shall be lawful for the Sublessors to cause said property to be insured, and the Sublessors may recover the amount of any payments of premiums for such insurance, with interest thereon from the date thereof, from

the Sublessee without prejudice to any other right or remedy secured to the Sublessors by this sublease for breach of any covenants thereof.

(L) That if the Sublessee shall fail for thirty (30) days after the same shall be due and payable to make any monthly payment of the rent herein reserved, as stipulated in this sublease, or to pay to the New Haven Company the taxes and charges imposed or levied upon the demised property (except as otherwise hereinbefore provided), unless the payment of any such tax or charge shall be resisted by legal proceedings taken before any sale or alienation of such demised premises shall take place by reason of such non-payment, then, and in any such case, this sublease shall expire and terminate at the option of the Sublessors, and the Sublessors may thereupon re-enter upon the demised premises as an entirety and notwithstanding any assignment, pledge, or mortgage of this sublease, or any rights thereunder, and the same have and possess as of their former estate, without prejudice to their right of action for arrears of rent or breach of covenant.

(M) That if the Sublessee shall fail to keep and perform any other of its covenants and agreements in this sublease contained, and such default shall continue ninety (90) days after written notice thereof shall have been given by the Sublessors to the Sublessee, then, and in any such case, this sublease shall expire and terminate at the option of the Sublessors, unless within said period of ninety (90) days the Sublessee shall deny in writing that the acts complained of constitute a default under the lease and shall request a reference of the questions in dispute to

arbitration, and shall, at the same time, in writing, appoint an arbitrator on its behalf; thereupon the Sublessor shall also in writing appoint an arbitrator, and to the two so appointed the questions in dispute shall be submitted for final determination within thirty days after the appointment of the arbitrator by the Sublessors. If the two thus appointed cannot agree within thirty days after such submission, within thirty days thereafter they shall either select a third arbitrator, or if, within such period they fail to make such selection, it may be made by the Chief Justice of the Supreme Court of Connecticut, upon the request of either party after reasonable notice first given to the other party, and the determination of such three arbitrators, or a majority of them, so appointed, shall be final and binding upon the parties as to the matters submitted. If the Sublessee shall not make any request for arbitration, this sublease shall, at the option of the Sublessors, expire and terminate, and the Sublessors may thereupon re-enter upon the demised premises as an entirety, and notwithstanding any assignment, pledge or mortgage of this sublease, or any rights thereunder, the same have and possess as of their former estate without prejudice to their right of action for arrears of rent or breach of covenant; but if the Sublessee shall request such arbitration, and if, upon the award of such arbitrators, the contention of the Sublessors shall be sustained, then, unless the Sublessee shall within ninety (90) days thereafter, proceed to remedy such default and prosecute such remedy to completion with all reasonable dispatch, the Sublessors may re-enter and repossess said premises without prejudice as aforesaid.

(N) The Sublessee shall make, execute and deliver to the New Haven Company within ten days after the execution hereof, and thereafter keep in force its bond in the penal sum of Five Hundred Thousand Dollars ($500,000), payment of which shall be guaranteed by a surety company satisfactory to the New Haven Company, conditioned upon the faithful performance of all the obligations assumed by or imposed upon the Sublessee under the provisions of this sublease. It is the intention of the New Haven Company that if and when it is satisfied that the payment of the rent and performance of the other covenants of the sublease are secure it will either reduce the amount of the said bond or waive it entirely.

In case of failure on the part of the Sublessee to keep said bond in force, the Sublessors shall have the right to cause the same to be renewed, or to obtain in the name and on behalf of the Sublessee a new bond, and to recover from the Sublessee the amount of any payments made by the Sublessors to the surety as premiums upon such bond, together with interest thereon from the date thereof, without prejudice to any other right or remedy secured to the Sublessors by this sublease for breach of any of the covenants thereof except this covenant (N).

(O) Except as herein otherwise expressly provided, any or all rights and duties arising from this instrument which may be assigned or transferred shall inure to the benefit of and shall be binding upon the respective assignees or transferrees of the parties hereto.

(P) The United Company shall pay to the New Haven Company, within thirty days from

the date hereof, an amount sufficient to reimburse 511
the New Haven Company for its expenditures on the new gas plant and distributing system at Greenwich.

(Q) Any notice hererby provided to be given or any payment hereby required to be made to the Sublessors shall be conclusively deemed effectually to have been given or made if served personally or by registered mail upon the Secretary for the time being of the New Haven Company, or if paid to the Treasurer for the time being of said Company at its office in the City of New Haven, Connecticut. 512

Any notice hereby provided to be given to the Sublessee shall be conclusively deemed effectually to have been given if served personally or by registered mail upon the Secretary of the United Electric Light and Water Company at its office in Hartford, Connecticut, or elsewhere as the Sublessee may from time to time by resolution of its Board of Directors request.

(R) The schedules hereinbefore referred to are of even date herewith and are signed by the parties hereto. The said schedules may at any time hereafter be modified or abrogated by mutual 513
consent and new schedules similarly signed may be added hereto, and any such new schedule shall form a part hereof.

In witness whereof, the parties hereto, pursuant to the authority and direction of their respective Boards of Directors, have caused these presents to be signed in their respective corporate names by their respective presidents, or vice-presidents, and their respective corporate seals to be affixed and attested by their respective

514 secretaries at New Haven, Connecticut, this 30th day of December, 1911.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
by
CHARLES S. MELLEN
President.

[CORPORATE SEAL]

Attest:
ARTHUR E. CLARK
Secretary.

HOUSATONIC POWER COMPANY,
by
EDWARD G. BUCKLAND
Vice-President.

515 [CORPORATE SEAL]

Attest:
ARTHUR E. CLARK
Secretary.

THE CONNECTICUT COMPANY,
by
LUCIUS S. STORRS
Vice-President.

[CORPORATE SEAL]

Attest:
ARTHUR E. CLARK
Secretary.

THE UNITED ELECTRIC LIGHT AND WATER COMPANY,
by
MILTON J. WARNER
Vice-President.

516 [CORPORATE SEAL]

Attest:
ARTHUR PERKINS
Secretary.

Signed sealed and delivered in
the presence of
M. K. DUGAN
C. L. CAMPBELL
Witnesses to all signatures

(Acknowledgments and schedules omitted)

Exhibit A annexed to Proof of Claim.

ACCEPTANCE

THE UNITED ELECTRIC LIGHT AND WATER COMPANY

DATED FEBRUARY 28, 1912.

To The Connecticut Railway and Lighting Company:

The United Electric Light and Water Company, (herein referred to as the Sublessee), hereby files with The Connecticut Railway and Lighting Company, (as Lessor under the Lease, dated December 19, 1906, made to The Consolidated Railway Company, herein referred to as the Lessee, and in compliance with the provisions of said Lease) its agreement to accept the provisions of the Sublease, dated December 30, 1911, made by The New York, New Haven and Hartford Railroad Company, (as successor to The Consolidated Railway Company), and Housatonic Power Company to The United Electric Light and Water Company, to a copy of which Sublease, hereunto annexed, reference is hereby made for a description of the property, rights and franchises thereby conveyed and for the nature and extent of the rights and benefits thereby conferred and the obligations thereby imposed upon and assumed by the Sublessee, and agrees to accept all the obligations and undertakings in said Sublease specified assumed by

520 the original Lessee regarding or affecting the assigned property.

Dated, Febrary 28th, 1912.

THE UNITED ELECTRIC LIGHT AND WATER COMPANY,

By

M. J. WARNER
Vice President.

[CORPORATE SEAL.]

Attest:

ARTHUR PERKINS,
521 Secretary.

(Acknowledgments omitted.)

522

Exhibit A annexed to Proof of Claim.

AGREEMENT

BETWEEN

CONNECTICUT RAILWAY AND LIGHTING COMPANY,

HOUSATONIC POWER COMPANY,

THE UNITED ELECTRIC LIGHT AND WATER COMPANY

AND

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

DATED JUNE 27, 1917.

THIS AGREEMENT Made this 27th day of June A. D. 1917, by and between the CONNECTICUT RAILWAY AND LIGHTING COMPANY, hereinafter called "the original lessor", party of the first part, the HOUSATONIC POWER COMPANY, hereinafter called "Housatonic Company", party of the second part, THE UNITED ELECTRIC LIGHT AND WATER COMPANY, hereinafter called "United Company", party of the third part, and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, hereinafter called "New Haven Company", party of the fourth part, all corporations organized and existing under the laws of the State of Connecticut, *Witnesseth:*

ARTICLE I.

Statement of the relations of the parties hereto and of the subject matter of this contract.

The New Haven Company is the successor to the corporations organized prior to December 19,

526 1906, under the laws of the State of Connecticut, and upon that date existing as such corporations under the names respectively of The Consolidated Railway Company and The New York, New Haven and Hartford Railroad Company; said corporations, The Consolidated Railway Company and The New York, New Haven and Hartford Railroad Company having been merged, since December 19, 1906, under the laws of the State of Connecticut, into a single corporation with the powers and under the obligations of both prior corporations, under the name of The New
527 York, New Haven and Hartford Railroad Company.

On December 19, 1906, a lease for 999 years (which has been recorded in the office of the Secretary of State of Connecticut) was executed and delivered from said the original lessor to said The Consolidated Railway Company, of certain properties therein generally described as trolley, gas and electric properties. A copy of said lease is attached hereto, marked "Exhibit A". Appended to said lease and recorded with it as a part of it is a written guaranty of its performance, executed by the New Haven Company,
528 as that corporation existed on December 19, 1906.

Through the said merger of the former New York, New Haven and Hartford Railroad Company with The Consolidated Railway Company the present New Haven Company, some time prior to February 28, 1910, became and is both the original lessee and the guarantor of said lease of December 19, 1906.

On the 28th day of February, 1910, there were executed between the New Haven Company and the Housatonic Company two instruments in writing, copies of which are attached hereto,

marked respectively "Exhibit B" and "Exhibit C" by the terms of which certain of the property, real and personal, and of the franchises demised under the aforesaid lease of December 19, 1906, were assigned, demised or sublet by the New Haven Company to the Housatonic Company upon the terms and conditions in said instruments stated, for the balance of said term; said property so assigned, demised and sublet being hereinafter generally termed as the "demised gas and electric properties." 529

The property and franchises so assigned, demised or sublet were, *inter alia*, such of the property and franchises of the original lessor as were necessary for, or used in, or particularly connected with the generation or distribution or sale of gas and electricity within the State of Connecticut, except as otherwise provided in said two instruments in writing, Exhibits "B" and "C" above. 530

The said Housatonic Company agreed in said Exhibit "C" to accept all the obligations of said conveyance, and also all the obligations undertaken by the original lessee in the lease of December 19, 1906, regarding or affecting that part of the originally demised property and franchises so assigned or sublet; and the New Haven Company also agreed that its obligations under the aforesaid lease, Exhibit "A", and guaranty appended thereto, should not in any way be diminished thereby. A copy of said agreement, Exhibit "C", was duly filed with the original lessor, all as provided for in said lease, Exhibit "A". 531

By an agreement dated December 30, 1911, of which a copy is attached, marked Exhibit "D", between the New Haven Company, the Housatonic Company and the United Company, the

532 New Haven Company and the Housatonic Company assigned and sublet to the United Company certain of the property, real and personal, and franchises theretofore conveyed and demised by the New Haven Company by instruments in writing, Exhibits "B" and "C", to the Housatonic Company.

Thereafter the United Company filed with the original lessor an agreement of acceptance, dated February 28, 1912, copy of which is attached marked Exhibit "E."

The original lessor has claimed that the re-
533 quirements of the original lease with respect to an acceptance under such circumstances have not been satisfied by the filing of the above instrument, and has demanded that such other or additional acceptance be filed as counsel may advise as necessary to satisfy the requirements of the original lease.

The provisions of the original lease, Exhibit "A" are uncertain as to what would occur with reference to the properties sublet under Exhibits "B", "C" and "D", in case of the termination of the original lease for any cause prior to the expiration of the term named therein.

534 It might be for the interest of the original lessor to claim, in case of such termination, that the entire properties covered by the original lease, including the properties sublet under Exhibits "B", "C" and "D", should revert to the original lessor; free of any claim of the original lessee or of any sublessees thereto; or that if such sublessees, or any of them, should desire to save their leasehold interests, they would be obliged to assume all the responsibilities of the original lease, including the payment of all the rental therein reserved.

Also, in case of such termination of the original lease, it might be for the interest of the original lessor to claim, with reference to properties sublet under Exhibits "B", "C" and "D", that all property, real and personal, then in use in connection with the properties described in Exhibits "B", "C" and "D", at such termination of said original lease, even though situated elsewhere than on the demised premises, should be transferred to the original lessor as "additions" to the demised premises without sufficient provision for compensation. 535

While opposing interests might dispute these various claims, yet it is obvious that such claims as the original lessor might so make, are capable of being made by the terms of the original lease, and that it would be uncertain except upon a judgment of the courts of last resort, whether such claims were well founded. 536

The great increase in the use of electrical energy in manufacturing, transportation, and for domestic purposes, since 1906 calls for the operation of generating plants, both steam and hydraulic, transmission lines, substations, etc., of great capacity, which it may be advantageous to locate elsewhere than on the demised premises. 537

New capital in large amounts is necessary to conduct these operations so as to satisfy the just demands of the public. This new capital cannot be induced to make such investment, unless the consequences which will follow the termination of the lease prior to the term named in it, by default or other cause, shall be clearly defined by agreement, and unless it shall be expressly and clearly stipulated that investments made, which are not located upon the demised premises, shall not under any conditions be construed to be a part of the demised premises.

538 ARTICLE II.

Statement of the considerations of the various parties to this contract.

So far the Housatonic Company, the United Company, and the original lessor herein enter into mutual promises, the circumstances above stated and the mutuality of the promises are the consideration.

So far as the New Haven Company gives its consent to the stipulations herein stated, it is understood that it is moved thereto in order to
539 obtain for its lessor and for its sublessees the Housatonic Company and the United Company, respectively, and for the demised properties submitted to their care, the benefits of this agreement.

ARTICLE III.

It is therefore, agreed:

First: That the United Company shall file with the original lessor its written acceptance of the terms of the original lease in the form hereto
540 attached, marked "Exhibit F".

Second: That no property, real or personal, or franchises owned by the Housatonic Company at the date of the subleases, Exhibits "B" and "C", or owned by the United Company at the date of the sublease, Exhibit "D", became subject to the terms of said lease. Exhibit "A", by reason of the execution of the said subleases, Exhibits "B", "C" and "D", and that no property, real or personal, or franchises which have been acquired subsequently by the Housatonic Company or by the United Company,

or which may be acquired by the Housatonic Company or by the United Company hereafter, shall be construed to be part of the demised gas and electric properties, or subject to the provisions of said lease, Exhibit "A", or of said subleases, Exhibits "B", "C" and "D", except additions to or extensions or betterments of the demised property within the territorial limits of the towns where said property is located and except franchises exercisable wholly within such territorial limits or franchises not wholly so limited, so far as the same may be exercised within such territorial limits. It is further agreed that in the event that said Housatonic Company or the said United Company, should become consolidated with or merged into other corporations, whether such consolidation or merger be effected by deed or agreement, by purchase of assets, or by the acquisition of shares of stock, no property, real or personal, or franchises belonging to such other corporations shall become by virtue of such merger or consolidation in any way subject to the terms and provisions of said lease, Exhibit "A", or of said subleases, Exhibits "B", "C" and "D".

541

542

Third: The Housatonic Company and the United Company severally and jointly agree for themselves and for their successors and assigns, to acquire, erect, install, maintain and operate, or cause to be acquired, erected, installed, maintained and operated, such electric generating plants, either steam or hydraulic, or both, and such transmission lines, substations, plant, apparatus and appurtenances (being the separate property of either Company, not subject to the provisions of said lease, Exhibit "A", or of said subleases, Exhibits "B", "C" and "D") as, in

543

connection with the generating stations, transmission lines, substations, plant, apparatus and appurtenances, which are part of the demised premises, will be adequate and sufficient at all times during the term of said subleases to meet the reasonable requirements and demands of the business of the leased electric properties, as well as provide for other business, if any, of the Housatonic Company, and of the United Company, their successors and assigns.

Fourth: The original lessor agrees that on the contingency of the termination of the original lease before the expiration of its term for any cause it will treat the Housatanic Company and the United Company, their successors and assigns, as entitled to the continuance of the leasehold privileges in said demised gas and electric properties conveyed to them or either of them by said subleases, Exhibits "B", "C" and "D", for the balance of the full term named therein and upon the rentals named therein as if such earlier termination of the original lease had not occurred; provided that the rentals agreed to be paid under said subleases shall continue to be paid when and as due, such payments to be made and received in accordance with the provisions of subdivision Eighth of this article in satisfaction of the obligations of said subleases concerning the payment of rental, and that the sums of money undertaken to be paid by the Housatonic Company and by the United Company under paragraph Sixth of this article of this agreement shall continue to be paid when due; the intent being that in case of such earlier termination of the original lease, the Housatonic Company and the United Company, their successors and assigns, shall not suffer forfeiture,

but shall hold said demised gas and electric properties as if the subleases of February 28, 1910, and of December 30, 1911, had been made by the original lessor, and that said Housatonic Company shall be bound to perform the obligations of said subleases, Exhibits "B" and "C" and the said United Company shall be bound to perform the obligations of said sublease, Exhibit "D", as fully and with the same effect as if the original lessor were named in each of said instruments as the lessor.

Fifth: In the event of the termination of the original lease Exhibit "A", prior to the expiration of the term stated therein for any cause, and the termination for any cause subsequent thereto of the subleases, Exhibits "B", "C" and "D" prior to the expiration of the term named therein, then, if the power plants, transmission lines, substations, plant, apparatus and appurtenances which are then part of the demised premises shall not then be of sufficient capacity to produce the electrical energy necessary for the operation by the original lessor of the demised electrical properties, the Housatonic Company or the United Company, or both, their successors and assigns, shall, from their other electric generating stations, transmission lines, substations, plant, apparatus and appurtenances not located on or part of the demised premises furnish to the original lessor, for the use of the demised electric properties, such additional electrical energy as will enable the original lessor to continue the operation of the same after possession has been resumed by the original lessor, so that the business of operating the demised electric properties, shall not be interrupted by such termination of said lease, Exhibit

"A", or of said subleases, Exhibits "B", "C" and "D" by reason of lack of power. If the original lessor shall not within thirty (30) days next ensuing such termination of said lease, Exhibit "A", and of said subleases, Exhibits "B", "C" and "D", demand from said Housatonic Company or United Company, or both, their successors and assigns, that such service of electrical energy from such other stations shall be continued, said companies may, at the expiration of said period of thirty (30) days cease such service, and the original lessor shall pay for the electrical energy furnished during such thirty (30) day period, such an amount as may be agreed or as may be fixed by three arbitrators to be appointed as hereinafter provided. If within said period of thirty (30) days the original lessor shall demand that the Housatonic Company or the United Company, or both, their successors and assigns, shall continue, from such other electric generating stations, transmission lines, substations, plant, apparatus and appurtenances, not located on or part of the demised premises, to furnish to the original lessor such additional electrical energy as it will require to fully operate the demised electric properties, the possession of which has been resumed by it, and also if the original lessor shall specify the amount of electrical energy and the conditions and period of the service which it will require, then said companies, or either or both of them, shall continue to furnish said additional electrical energy at the rates, for the period and upon the terms and conditions which may be established by mutual agreement between the parties, or, in the event that no such agreement shall be entered into within a period of sixty (60) days from such termination, then at such rates, and for

such period and upon such terms and conditions as shall be specified by three arbitrators, to be 553
appointed as hereinafter provided; provided, however, that the three arbitrators shall specify such rates, period, terms and conditions as in their opinion will yield to the Housatonic Company or to the United Company, or to their successors and assigns, a profit reasonable under all the circumstances.

Sixth: In consideration of the stipulations, promises, and agreements of the original lessor herein stated, the Housatonic Company and the United Company jointly and severally agree, for themselves, their successors and assigns, to and 554
with the original lessor, to pay to it in equal quarterly installments on the first day of August, November, February and May (the first payment to be made as of the first day of August, 1917) in each year during the remaining period of said term of nine hundred and ninety-nine (999) years, set out in said original lease, Exhibit "A", the sums following, to-wit:

For the year beginning August 1, 1917
the sum of..... $20,000.
For the year beginning August 1, 1918
the sum of..... $30,000. 555
For the year beginning August 1, 1919
the sum of..... $40,000.
For the year beginning August 1, 1920
the sum of..... $52,500.
And thereafter in each year during said
term the sum of..... $52,500.

Said sums shall be payable to the original lessor or to its order. In the event of the non-payment for the space of thirty (30) days of any of said sums after demand in writing therefor, by the

original lessor, then at the election of the original lessor the provisions of the Fourth Clause of this Article III may be declared void by the original lessor without, however, in any manner affecting or impairing the obligations of the Housatonic Company and the United Company, their successors and assigns, to pay to the original lessor the sums stipulated in this clause during the continuance of their possession of the property; provided, however, that if the original lessor does not elect to declare said Fourth Clause void, the obligations of the Housatonic Company and of the United Company, their successors and assigns, to pay the original lessor the sums stipulated in this clause shall continue in full force and effect.

Seventh: In consideration of the consent to this agreement of the New Haven Company, which is hereby given, the other parties hereto agree and stipulate that nothing herein contained shall enlarge the obligations or impair the rights of the New Haven Company either under said lease of December 19, 1906, or as Guarantor under said guaranty bearing the same date appended thereto, or as a party to the subleases herein referred to as Exhibits "B", "C" and "D", and the New Haven Company agrees that nothing herein contained shall impair or diminish its liabilities or obligations under the above named instruments.

Eighth: The New Haven Company and Housatonic Company hereby direct the United Company to pay to the original lessor the rental which the terms of Exhibit "D" provide shall be paid by the United Company to the New Haven Company or its order, and the New Haven

Company agrees that such payments by the United Company to the original lessor shall be in full satisfaction of the obligations of the Housatonic Company to pay similar amounts to the New Haven Company under the provisions of sublease, Exhibit "B" and of the United Company under the provisions of sublease, Exhibit "D"; in consideration therefor the original lessor, the Housatonic Campany and the United Company severally agree that the payments so made by the United Company to the original lessor shall be receipted for by the original lessor to the New Haven Company and to the United Company, as a full discharge of the obligations of the New Haven Company to pay or be responsible for the amount of rental so receipted for. 559 560

Ninth: The three arbitrators referred to in Clause Fifth hereof shall be competent disinterested persons and shall be appointed in the following manner; one shall be chosen by the original lessor; one by the Housatonic Company and the United Company or their respective successors and assigns; and the two so chosen shall select the third. Written notice of the appointment of an arbitrator shall be served on the other party. If the party on whom such notice is served shall for twenty (20) days thereafter neglect to name by written notice to the other party the person to act as their or its arbitrator, then the party giving such notice shall name the second arbitrator and the two thus chosen shall select the third. If the two arbitrators thus chosen as herein provided shall fail to agree upon the third arbitrator, then such arbitrator shall be named by any Justice of the Superior Court of Connecticut, and application may be made, 561

562 upon five days written notice to the parties hereto by either or both of such arbitrators, to such Judge for such purpose. The board of arbitrators so chosen shall immediately proceed to hear and determine the questions submitted to them in reference to the rates, terms, conditions and period under which electrical energy shall be or has been furnished pursuant to Clause Fifth hereof, after giving to each party not less than ten (10) days written notice of the time and place of meeting, unless, in their judgment, the hearing should be adjourned to a later day or days, of which adjournment like notice shall be
563 given, unless notice is waived by both parties, in which case the hearing may proceed at an earlier date. The determination of such board of arbitrators or a majority of them in reference to the rates, terms, conditions and period under which electrical energy shall be or has been furnished pursuant to Clause Fifth hereof shall be final and conclusive upon the parties and the said parties shall abide by such decision and perform the conditions thereof as if they were made a part hereof. All expenses connected with such arbitration, including a reasonable compensation
564 to the arbitrators shall be shared equally between the parties other than the New Haven Company.

Tenth: The rights, duties and obligations arising from this agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto.

In Witness Whereof the parties hereto have caused this instrument to be signed by their respective Presidents or Vice-Presidents and their corporate seals to be affixed and attested by

their respective Secretaries or Assistant Secretaries, the day and year first above written. 565

ned, sealed and delivered in presence of:
A. WARDEN
M. SANFORD

CONNECTICUT RAILWAY AND LIGHTING COMPANY,
By
R. A. C. SMITH
President.
Attest:
G. W. CURRAN
Secretary.

CORPORATE SEAL]

ned, sealed and delivered in presence of:
A. WARDEN
EPH JOHNSTON

HOUSATONIC POWER COMPANY,
By
WM. S. MURRAY
President. 566
Attest:
EDWARD PORTER
Secretary.

ORPORATE SEAL]

ned, sealed and delivered in presence of:
AS. S. EARLE
A. WARDEN

THE UNITED ELECTRIC LIGHT & WATER COMPANY,
By
IRVIN W. DAY
President.
Attest:
CHARLES L. CAMPBELL
Secretary.

ORPORATE SEAL]

ned, sealed and delivered in presence of:
I. SPOCK
A. WARDEN

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, 567
By
F. G. BUCKLAND
Vice President.
Attest:
A. E. CLARK
Secretary

ORPORATE SEAL]

Approved as to form
B. I. SPOCK
General Solicitor.

Exhibit A annexed to Proof of Claim.

568 **ACCEPTANCE**

THE UNITED ELECTRIC LIGHT AND WATER COMPANY

DATED JUNE 27, 1917.

The United Electric Light and Water Company for the considerations to it moving under two certain agreements one thereof dated December
569 30, 1911, between The New York, New Haven and Hartford Railroad Company, the Housatonic Power Company and The United Electric Light and Water Company, in which The Connecticut Company joined for the purposes therein stated, copy of which is attached hereto marked "Exhibit A", and the other thereof dated June 27th, 1917, by and between the Connecticut Railway and Lighting Company, the Housatonic Power Company, The United Electric Light and Water Company and The New York, New Haven and Hartford Railroad Company, copy of which
570 is attached hereto marked "Exhibit B", and for the purpose of complying with the provisions of a certain indenture of lease dated December 19, 1906, by and between the Connecticut Railway and Lighting Company and The Consolidated Railway Company, copy of which is attached hereto marked "Exhibit C," hereby accepts the provisions of said agreements dated December 30, 1911, and June 27th, 1917, together with all the obligations and undertakings assumed by the

original lessee named in said indenture of lease dated December 19, 1906, regarding or affecting the property assigned or sublet by said instrument in writing dated December 30, 1911. 571

In Witness Whereof the said The United Electric Light and Water Company under authority and direction of its Board of Directors has caused this instrument to be signed by its President and its corporate seal to be hereunto affixed this twenty-seventh day of June A. D. 1917.

Signed, sealed and delivered in the presence of:
CLARENCE A. WARDEN
CHAS. S. EARL.

THE UNITED ELECTRIC LIGHT & WATER COMPANY, 572
By
IRVIN W. DAY [SEAL]
President.

(Acknowledgment omitted.)

573

Exhibit A annexed to Proof of Claim.

574 **ASSIGNMENT**

THE UNITED ELECTRIC LIGHT AND WATER COMPANY

TO

THE CONNECTICUT LIGHT AND POWER COMPANY

DATED AUGUST 9, 1917.

575 KNOW ALL MEN BY THESE PRESENTS, that The United Electric Light and Water Company, a corporation duly chartered by the State of Connecticut and located at Waterbury in said State, for the consideration of One Dollar and other valuable considerations received to its full satisfaction of The Connecticut Light and Power Company, a corporation duly chartered by the State of Connecticut under the name of The Rocky River Power Company and located at New Milford in said State, does hereby assign to said The Connecticut Light and Power Com-
576 pany, its successors and assigns, the certain sublease dated the 30th day of December, 1911, copy of which is hereto attached, marked "Exhibit D" and made a part hereof, executed by The New York, New Haven and Hartford Railroad Company and the Housatonic Power Company subletting to The United Electric Light and Water Company certain franchises and property, real and personal, therein mentioned, together with

all estates, rights, title and interest whatsoever of said The United Electric Light and Water Company therein or thereunder. 577

In Witness Whereof, The United Electric Light and Water Company has hereunto set its hand and seal this 9th day of August, 1917, acting by I. W. Day, its President and Agent hereunto duly authorized.

Signed, sealed and delivered in the presence of:

CLARENCE A. WARDEN
GARFIELD SCOTT

THE UNITED ELECTRIC LIGHT AND WATER COMPANY
By
I. W. DAY (SEAL)
Its President and Agent 578
hereunto duly authorized.

(Acknowledgment omitted)

579

Exhibit A annexed to Proof of Claim.

580

ASSIGNMENT

THE UNITED ELECTRIC LIGHT AND WATER COMPANY

TO

THE CONNECTICUT LIGHT AND POWER COMPANY

DATED AUGUST 9, 1917.

581

KNOW ALL MEN BY THESE PRESENTS, that The United Electric Light and Water Company, a corporation duly chartered by the State of Connecticut and located at Waterbury in said State, for the consideration of One Dollar and other valuable considerations received to its full satisfaction of The Connecticut Light and Power Company, a corporation duly chartered by the State of Connecticut under the name of The Rocky River Power Company and located at New Milford in said State, does assign and
582 transfer unto said The Connecticut Light and Power Company, its successors and assigns, all the right, title and interest of said The United Electric Light and Water Company in, under and to the agreement dated June 27, 1917, between Connecticut Railway and Lighting Company, Housatonic Power Company, The United Electric Light and Water Company, and The New York, New Haven and Hartford Railroad

Company, a copy of which is hereto attached and made a part hereof. 583

In Witness Whereof, The United Electric Light and Water Company has hereunto set its hand and seal this 9th day of August, 1917, acting by I. W. Day, its President and Agent hereunto duly authorized.

igned, sealed and
vered in the pres-
e of:
IELD SCOTT
L. CAMPBELL

THE UNITED ELECTRIC LIGHT AND WATER COMPANY

By [CORPORATE SEAL.]
I. W. DAY
Its President and Agent hereunto duly authorized. 584

(Acknowledgment omitted)

585

Exhibit A annexed to Proof of Claim.

586 # ACCEPTANCE

THE CONNECTICUT LIGHT AND POWER COMPANY

Dated August 10, 1917.

The Connecticut Light and Power Company, formerly The Rocky River Power Company, for the considerations to it moving under two certain assignments from the Housatonic
587 Power Company, one thereof dated August 9th, 1917 (a copy of which, marked "Exhibit 1," is hereto attached and made a part hereof), of two certain agreements, both dated February 28, 1910, between The New York, New Haven and Hartford Railroad Company and Housatonic Power Company, together with all the estates, rights, title and interest whatsoever of said Housatonic Power Company therein or thereunder (copies of said agreements dated February 28, 1910, marked "Exhibit B" and "Exhibit C," respectively, being attached to
588 and made a part of said Exhibit 1), and the other thereof, also dated August 9th, 1917 (a copy of which, marked "Exhibit 2," is hereto attached and made a part hereof), of a certain agreement dated June 27, 1917, between Connecticut Railway and Lighting Company, Housatonic Power Company, The United Electric Light and Water Company and The New York, New Haven and Hartford Railroad Company (a copy of said agreement dated June 27, 1917, being attached to and made a part of said Exhibit 2), and for the purpose of complying with the provisions of said two agreements dated February 28, 1910, and with the provisions of the indenture of lease dated December

19, 1906, between the Connecticut Railway and Lighting Company and The Consolidated Railway Company (a copy of said indenture of lease dated December 19, 1906, marked "Exhibit A," being attached to and made a part of said agreement dated June 27, 1917), hereby accepts the aforesaid two assignments dated August 9th, 1917, together with all the obligations and undertakings assumed by the Housatonic Power Company in said two agreements dated February 28, 1910, and in said agreement dated June 27, 1917, and also all the obligations and undertakings assumed by the original lessee named in said indenture of lease dated December 19, 1906, regarding or affecting the property assigned or sublet by said two agreements dated February 28, 1910. And The Connecticut Light and Power Company further agrees that this instrument shall be treated as part of said two assignments dated August 9th, 1917, and as being made with all the parties to said agreement of June 27, 1917, namely, Connecticut Railway and Lighting Company, Housatonic Power Company, The United Electric Light and Water Company, and The New York, New Haven and Hartford Railroad Company.

589

590

In Witness Whereof The Connecticut Light and Power Company has caused this instrument to be executed by its Vice-President and its corporate seal to be duly affixed and attested by its Assistant Secretary as of the 10th day of August, 1917.

591

Signed, sealed and livered in the pres- ce of:

C. A. WARDEN
D. K. MURDOCK

THE CONNECTICUT LIGHT AND POWER COMPANY

By

WALTON CLARK
Vice-President.

ORPORATE SEAL]

Attest:

I. W. MORRIS
Assistant Secretary.

Exhibit A annexed to Proof of Claim.

592 **ACCEPTANCE**

THE CONNECTICUT LIGHT AND POWER COMPANY.

DATED AUGUST 10, 1917.

THE CONNECTICUT LIGHT AND POWER COMPANY, for the considerations to it moving under two certain assignments from The United Electric Light and Water Company, one thereof dated August 9th, 1917 (a copy of which, marked
593 "Exhibit 1," is hereto attached and made a part hereof), of a certain agreement dated December 30, 1911, between The New York, New Haven and Hartford Railroad Company, Housatonic Power Company, and The United Electric Light and Water Company, in which The Connecticut Company joined for the purposes therein stated, together with all the estates, rights, title and interest whatsoever of said The United Electric Light and Water Company therein or thereunder (a copy of said agreement dated December 30, 1911, marked "Exhibit D," being attached to and made a part of said Exhibit
594 1), and the other thereof, also dated August 9th, 1917, (a copy of which, marked "Exhibit 2," is hereto attached and made a part hereof), of a certain agreement dated June 27, 1917, between Connecticut Railway and Lighting Company, Housatonic Power Company, The United Electric Light and Water Company, and The New York, New Haven and Hartford Railroad Company (a copy of said agreement dated June 27, 1917, being attached to and made a part of said Exhibit 2), and for the purpose of complying with the provisions of said agreement dated December 30, 1911, and with the provisions of the indenture of lease dated December 19, 1906,

between the Connecticut Railway and Lighting Company and The Consolidated Railway Company (a copy of said indenture of lease dated December 19, 1906, marked "Exhibit A," being attached to and made a part of said agreement dated June 27, 1917), hereby accepts the aforesaid two assignments dated August 9th, 1917, together with all the obligations and undertakings assumed by The United Electric Light and Water Company in said agreement dated December 30, 1911, and in said agreement dated June 27, 1917, and also all the obligations and undertakings assumed by the original lessee named in said indenture of lease dated December 19, 1906, regarding or affecting the property assigned or sublet by said agreement dated December 30, 1911. And The Connecticut Light and Power Company further agrees that this instrument shall be treated as part of said two assignments dated August 9th, 1917, and as being made with all the parties to said agreement of June 27, 1917, namely, Connecticut Railway and Lighting Company, Housatonic Power Company, The United Electric Light and Water Company, and The New York, New Haven and Hartford Railroad Company. 595 596

In Witness Whereof The Connecticut Light and Power Company has caused this instrument to be executed by its Vice-President and its corporate seal to be duly affixed and attested by its Assistant Secretary as of the 10th day of August, 1917. 597

Signed, sealed and delivered in the presence of:
C. A. WARDEN
D. K. MURDOCK

THE CONNECTICUT LIGHT AND POWER COMPANY

By
WALTON CLARK,
Vice-President.

Attest:
I. W. MORRIS
Assistant Secretary.

[CORPORATE SEAL]

Exhibit A annexed to Proof of Claim.

595a

AGREEMENT

BETWEEN

CONNECTICUT RAILWAY AND LIGHTING COMPANY,

HOUSATONIC POWER COMPANY,

THE UNITED ELECTRIC LIGHT AND WATER COMPANY,

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

AND

596a THE CONNECTICUT LIGHT AND POWER COMPANY

DATED JULY 23, 1918.

THIS AGREEMENT made this twenty-third day of July, A. D. 1918, by and between the CONNECTICUT RAILWAY & LIGHTING COMPANY (hereinafter called the "Original Lessor"), party of the first part, the HOUSATONIC POWER COMPANY (hereinafter called "Housatonic Company"), party of the second part, THE UNITED ELECTRIC LIGHT AND WATER COMPANY (hereinafter called "United Company") 597a, party of the third part, THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY hereinafter called the "New Haven Company"), party of the fourth part, and THE CONNECTICUT LIGHT AND POWER COMPANY (hereinafter called the "Power Company"), party of the fifth part, all corporations organized and existing under the laws of the State of Connecticut, *Witnesseth*:

WHEREAS the Original Lessor, the Housatonic Company, the United Company and the New

Haven Company entered into an agreement dated June 27, 1917, a true and correct copy of which is hereto attached, marked "Exhibit X" and made a part hereof; and 595b

WHEREAS Subdivision Eighth of Article III of said agreement reads as follows:

> "*Eighth:* The New Haven Company and Housatonic Company hereby direct the United Company to pay to the original lessor the rental which the terms of Exhibit 'D' provide shall be paid by the United Company to the New Haven Company or its order, and the New Haven Company agrees that such payments by the United Company 596b to the original lessor shall be in full satisfaction of the obligations of the Housatonic Company to pay similar amounts to the New Haven Company under the provisions of sublease, Exhibit 'B' and of the United Company under the provisions of sublease, Exhibit 'D'; in consideration therefor the original lessor, the Housatonic Company and the United Company severally agree that the payments so made by the United Company to the original lessor shall be receipted for by the original lessor to the New Haven Company and to the United Company, as a 597b full discharge of the obligations of the New Haven Company to pay or be responsible for the amount of rental so receipted for;" and

WHEREAS shortly after the execution of said agreement Exhibit X the operation of said Subdivision Eighth of Article III was suspended by mutual consent of the parties to said agreement because the operation thereof would not accomplish the purposes which the parties to said agreement had in view; and

595c WHEREAS the Power Company, under its former name of The Rocky River Power Company, is the assignee from the Housatonic Company of two certain agreements, both dated February 28, 1910, between the New Haven Company and the Housatonic Company, together with all the estates, rights, title and interest whatsoever of the Housatonic Company therein or thereunder, copies of said agreements, marked "Exhibit B" and "Exhibit C", respectively, being attached to and made a part of said agreement Exhibit X, and is also the assignee from the Housatonic Company of said agreement Exhibit
596c X; and

WHEREAS the Power Company is the assignee from the United Company of a certain agreement dated December 30th, 1911, between the New Haven Company, Housatonic Company and the United Company together with all the estates, rights, title and interest whatsoever of the United Company therein or thereunder, a copy of said agreement, marked "Exhibit D", being attached to and made a part of said agreement Exhibit X, and is also the assignee from the United Company of said agreement Exhibit X; and

597c WHEREAS it is the desire of all the parties hereto that said Subdivision Eighth of Article III aforesaid should be amended so as to accomplish the purposes which the parties to said agreement Exhibit X had in view:

Now, Therefore, in consideration of the premises and of the mutuality hereof, it is agreed by and between the parties hereto that Subdivision Eighth of Article III of said agreement Exhibit X shall be amended to read as follows:

"*Eighth:* 1. The New Haven Company hereby directs the United Company to pay to

the Housatonic Company all sums of money 595d
which the terms of Exhibit 'D' provide shall be paid by the United Company to the New Haven Company or its order.

2. As to the rental provided to be paid to the New Haven Company by the Housatonic Company by said agreement, Exhibit 'B', the New Haven Company hereby directs the Housatonic Company to pay for and on account of the New Haven Company,

(*a*) to the parties and at the times and places all as provided in said agreement, Exhibit 'A', one-quarter of the respective 596d
sums required to pay the interest on bonds and to keep and perform the sinking fund agreements of the original lessor;

(*b*) to the original lessor or its order in equal quarterly payments, namely, on the first day of November, February, May and August, in each and every year (the first payment to be made as of August 1, 1918), the balance of the rental excluding taxes, paybale to the New Haven Company under said agreement, Exhibit 'B'.

The New Haven Company agrees that all 597d
such payments by the Housatonic Company and by the United Company shall be in full satisfaction of the respective obligations of the Housatonic Company and the United Company respectively to pay similar amounts to the New Haven Company under the provisions of said agreements, Exhibits 'B' and 'D', and the original lessor agrees that the payments so made by the Housatonic Company shall be in full satisfaction of the obligations of the New Haven Company to pay

595e similar amounts under provisions of said agreement, Exhibit 'A'.

The original lessor and the Housatonic Company severally agree that all such payments so made by the Housatonic Company to the original lessor or upon its order as aforesaid, shall be receipted for by or for the account of the original lessor, to the New Haven Company and to the Housatonic Company.

It is understood and agreed that all payments of taxes required to be made by the Housatonic Company and by the United Company under the agreements, Exhibits 'B', 'C' and 'D', shall continue to be made by said companies as provided therein."

596e

In Witness Whereof, the parties hereto have caused this instrument to be signed by their respective Presidents or Vice-Presidents and their corporate seals to be affixed and attested by their respective Secretaries or Assistant Secretaries the day and year first above written.

Signed, sealed and delivered in the
597e presence of
C. A. Warden
Garfield Scott

[corporate seal]

Connecticut Railway & Lighting Company,
By
R. A. C. Smith
President
Attest:
G. W. Curran
Secretary

Signed, sealed and delivered in the presence of
T. H. Blaikie
Chas. S. Earl

[corporate seal]

Housatonic Power Company
By
Paul Spencer
Vice President.
Attest:
I. W. Morris
Asst Secretary.

Exhibit A annexed to Proof of Claim.

gned, sealed and delivered in the presence of
H. Blaikie
has. S. Earl

[corporate seal]

The United Electric Light and Water Company
By
Irving W. Day
President.
Attest:
I. W. Morris
Asst Secretary.

595f

gned, sealed and delivered in the presence of
M. Soper
H. Rowland

[corporate seal]

The New York, New Haven and Hartford Railroad Company
By
E. G. Buckland
President.
Attest:
A. E, Clark
Secretary.

596f

gned, sealed and delivered in the presence of
A. Warden
arfield. Scott

[corporate seal]

The Connecticut Light and Power Company
By
Lewis Lillie
President.
Attest:
I. W. Morris
Asst Secretary.

(Acknowledgments omitted.)

597f

Exhibit A annexed to Proof of Claim.

598

AGREEMENT

BETWEEN

CONNECTICUT RAILWAY AND LIGHTING COMPANY,

THE CONNECTICUT LIGHT AND POWER COMPANY

AND

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

599

DATED APRIL 26, 1921.

THIS AGREEMENT made this 26th day of April, A. D. 1921, by and between CONNECTICUT RAILWAY AND LIGHTING COMPANY (hereinafter called "Original Lessor"), party of the first part, THE CONNECTICUT LIGHT AND POWER COMPANY (hereinafter called "Power Company"), party of the second part, and THE NEW
600 YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY (hereinafter called "New Haven Company"), party of the third part, all corporations organized and existing under the laws of the State of Connecticut, *Witnesseth:*

WHEREAS, the Original Lessor, the Housatonic Power Company (hereinafter called "Housatonic Company"), The United Electric Light and Water Company (hereinafter called "United Company"), and the New Haven Company, entered into an agreement dated June 27, 1917, for

the purposes therein set forth, subdivision Eight of Article III of said agreement having been amended for the purposes and in the manner set forth in the agreement dated July 23, 1918, between the Original Lessor, Housatonic Company, United Company, New Haven Company and Power Company. A true and correct copy of said agreement dated July 23, 1918, is hereunto attached, marked "Exhibit Z", and made a part hereof. Attached to said agreement Exhibit Z and made a part thereof, is a true and correct copy of said agreement dated June 27, 1917, marked "Exhibit X", to which latter are attached and made a part thereof certain exhibits, namely, Exhibits A, B, C, D, E and F; Exhibit A being a true and correct copy of the lease (hereinafter referred to as "Original Lease"), dated December 19, 1906, between the Original Lessor and The Consolidated Railway Company (now said New Haven Company); Exhibits B and C being copies of two certain written instruments, both dated February 28, 1910, between the New Haven Company and the Housatonic Company, by the terms of which certain property, real and personal, and franchises demised under the Original Lease, were demised by the New Haven Company to the Housatonic Company upon the terms and conditions in said instruments stated, for the balance of said term of said Original Lease, said property so demised being hereinafter generally termed as the "demised gas and electric properties"; Exhibit D being a true and correct copy of an agreement dated December 30, 1911, between the New Haven Company, Housatonic Company and United Company; Exhibit E being a copy of the agreement of acceptance dated February 28, 1912, which the United Company filed with the Original Lessor; and Exhibit F

601

602

603

being the form of agreement of acceptance which the United Company agreed to execute and file with the Original Lessor, and which the United Company has since executed and delivered; and

WHEREAS after the execution and delivery of said two written instruments dated February 28, 1910, between the New Haven Company and Housatonic Company (Exhibits B and C aforesaid) the New Haven Company and The Connecticut Company, a corporation also organized and existing under the laws of the State of Connecticut, executed two certain instruments in writing both dated February 28, 1910, copies of which are hereto attached, marked respectively "Exhibit G" and "Exhibit H", by the terms of which all the property, real and personal, and franchises demised under the Original Lease (except such thereof as had been theretofore demised by the New Haven Company to the Housatonic Company) were demised by the New Haven Company to The Connecticut Company upon the terms and conditions in said instruments stated, for the balance of said term of said Original Lease; said property so demised being hereinafter generally termed as the "demised electric railway properties"; and

WHEREAS said Original Lease contains, *inter alia*, the following covenants:

> "The Lessor covenants that for the purpose of discharging the bonded indebtedness shown in Schedule B and such bonded indebtedness as shall hereafter be created under the provisions of this lease, it will upon and in accordance with the written demand of the Lessee at any time during the continuance of this lease, make, execute and deliver to

the Lessee its new bonds or other obligations 607
or evidences of indebtedness (secured by mortgage upon all or part of the demised property if and as the Lessee may desire), and that the bonds or obligations or evidences of indebtedness so issued shall be for such time, and they and any mortgage securing the same shall be in such form and contain such terms, provisions, covenants and conditions as the Lessee shall determine and as the Lessor may lawfully issue. Provided, that the total amount of such bonds, obligations or evidences of indebtedness outstanding at any time shall not be increased beyond 608
the amount of the bonded indebtedness shown in Schedule B, and that the aggregate amount of interest annually payable thereon and of annual payments into any sinking funds shall not exceed the sum of six hundred and seventy-three thousand eight hundred and eighty-two dollars ($673,882), and that the liabilities of the Lessor under such bonds, obligations, evidences of indebtedness and mortgages shall not be more burdensome than at present. And further provided that in case such new bonds, obligations or evidences of indebtedness should be 609
so drawn as to mature contemporaneously with or at a date later than the expiration of said term, they and any mortgage securing the same shall be in such form and contain such terms, provisions, covenants and conditions as shall be acceptable to the Lessor. The Lessee covenants that it will pay the expenses incident to the issue of any bonds hereafter issued according to the provisions of this lease and the recording of the

610 mortgage securing the same, including the engraving of the bonds, and legal expenses.

"Until payment in full of the principal and interest of all bonds secured by any existing mortgage described in Schedule B or by any mortgage of the demised property or of any part thereof hereafter made in accordance with the provisions of this lease, such mortgages shall constitute a paramount lien upon all the property, contracts, rights, privileges and franchises demised superior to the estate conveyed to the Lessee under this lease.

611 "The Lessor further covenants that upon and in accordance with the written demand of the Lessee, at any time during the continuance of this lease, it will call or cause to be called for purchase or payment, as the Lessee may desire, any of the bonds of the Lessor then outstanding which the Lessor shall have the right to call or cause to be called; provided, that the Lessee shall furnish the necessary funds for such purchase or payment.

• • • • •

612 "The Lessee also further covenants (provided the Lessor shall keep and perform its covenants herein regarding the execution and delivery to the Lessee of bonds, obligations and mortgages) that during the continuance in force of this lease it will pay the principal of all the bonds described in Schedule B, and of all bonds, obligations or evidences of indebtedness which shall be issued by the Lessor in accordance with the provisions of this lease as the same shall mature or otherwise become payable.

• • • • •

"It is covenanted and agreed between the Lessor and Lessee that a certain portion of the rentals hereinbefore agreed to be paid by the Lessee to the Lessor, to wit, the annual sum of six hundred and seventy-three thousand eight hundred and eighty-two dollars ($673,882), is intended solely to provide for the payment of interest on bonds and payments into sinking fund, as set forth in said Schedule B, and that if the aggregate amount of the payments due from the Lessor for sinking fund and interest on bonds shall in any year hereafter be less than said sum above named, then and in such case the annual rentals to be paid by the Lessee to the Lessor shall be correspondingly diminished so as not to alter the amount of the balance of rental to be paid to the Lessor for other purposes than for such interest and sinking fund payments. It is further covenanted and agreed between the Lessor and the Lessee that such portion of the rentals paid to the Lessor by the Lessee under this lease as shall be applied to payments into such sinking fund, with all accumulations of interest thereon, shall create a claim of the Lessee upon the Lessor for the entire contents of the sinking fund, at the date of payment of the bonds, to be liquidated at the time when, under the provisions of said sinking fund agreement described in said Schedule B, the bonds in said sinking fund are to be cancelled, and that at such time, and in connection with the delivery to the Lessee by the Lessor of new bonds in substitution for previously existing bonds of the Lessor then to be paid by the Lessee, and on condition that the Lessee shall fulfil its covenants in relation to the

616 payment of the bonds of the Lessor then to be paid by the Lessee, the Lessor will issue and deliver to the Lessee bonds for the principal amount of said claim, which the Lessee agrees to accept in satisfaction thereof, such bonds to be of the same form and secured in the same way and to be part of the same issue as are such new bonds then to be issued by the Lessee as hereinbefore provided. * * *;"

and

617 WHEREAS in said agreements Exhibits B and G the New Haven Company has covenanted that having theretofore assumed all the indebtedness secured by any lien upon any of the property therein described and agreed to be demised, the New Haven Company would pay said indebtedness and interest when due thereon and save the other parties to said agreements harmless from loss, cost or damage arising out of any defaults in such payment; and

618 WHEREAS the New Haven Company, in said agreement Exhibit C, demised, as part of the demised gas and electric properties, the benefit of all of the covenants and agreements of the Original Lessor contained in the Original Lease so far as they are necessary or convenient for the full beneficial enjoyment of said demised gas and electric properties; and

WHEREAS the New Haven Company, in said agreement Exhibit H, demised, as part of the demised electric railway properties, the benefit of all of the covenants and agreements of the Original Lessor contained in the Original Lease so far as they are necessary or convenient for the full beneficial enjoyment of said demised electric railway properties; and

WHEREAS at the time of the execution and 619
delivery of said agreements Exhibits B and C the New Haven Company was interested in the capital stock of the Housatonic Company, but is no longer interested therein, and the New Haven Company therefore desires that its obligations under said Original Lease and under said agreements Exhibits B and C in connection with the indebtedness of the Original Lessor shall be reduced accordingly; and

WHEREAS new capital in large amounts is necessary to properly conduct the operations of said demised gas and electric properties and such 620
new capital cannot be induced to make such investments unless such agreement shall be made as will clearly limit the lien of any new bonds which may be issued under and in pursuance of the terms of said Original Lease and as will define and limit the obligations of the Power Company in connection therewith; and

WHEREAS the New Haven Company is moved to enter into this agreement, both in order to obtain the benefits thereof for the Power Company as successor to the Housatonic Company and the United Company, and for the demised 621
gas and electric properties, and to accomplish a reduction in the liabilities heretofore incurred by the New Haven Company in and about the indebtedness of the Original Lessor:

Now, Therefore, in consideration of the premises and of the mutuality hereof it is hereby agreed by and between the parties hereto as follows:

SECTION 1. It is stipulated (*a*) that no new bonds shall be issued by the Original Lessor under the provisions of the Original Lease, set

out above in the recitals hereof for an amount (not including such new bonds as may be issued to refund any outstanding bonds specified in Schedule B, Exhibit A, not theretofore acquired by, and contained in, the sinking fund therein referred to) in excess of three-quarters of the total amount the issue of which may be demanded under the Original Lease, provided that no part of any such new bonds shall be secured by any lien upon the demised gas and electric properties; and (*b*) that if when the First and Refunding Mortgage 4½% 50 Year Gold Bonds of the Original Lessor become payable, there shall remain outstanding any of said bonds or any of said underlying bonds specified in said Schedule B of Exhibit A not acquired for the sinking fund, new bonds may be issued for the purpose of refunding the same as provided in said covenants referred to above in the recitals hereof, provided, however, that not exceeding one-quarter of the total of such new bonds may be secured by a lien upon the demised gas and electric properties.

SECTION 2. When the First and Refunding Mortgage 4½% 50 Year Gold Bonds of the Original Lessor become payable and any new bonds are issued as provided in Section 1 above, the rental of the Power Company shall be reduced by an amount equal to the difference between one-quarter of the annual sinking fund and interest payments of the Original Lessor on its said bonds and the annual interest and sinking fund payments required upon any of the new bonds secured by lien upon the demised gas and electric properties. Thereafter, as any such new bonds secured by lien upon the demised gas and electric properties shall, from time to time, be paid or retired, through operation of any sinking

fund or otherwise, and not refunded, the annual 625
rental payable by the Power Company shall be reduced by an amount equal to the annual interest and sinking fund payments theretofore required in connection with such paid or retired bonds, so that, ultimately, should all such bonds be paid and not refunded, the maximum rental payable hereunder, not including taxes, shall not exceed $181,529.50 a year, not including, in the term "rental," for such computation, the amounts payable to the Original Lessor by the Power Company under said agreement Exhibit X.

SECTION 3. The Original Lessor agrees that if 626
so much of the rentals payable under said Original Lease as are required to pay the interest upon bonds and to keep and perform the sinking fund agreements of the Original Lessor shall not be paid in full at the places indicated in Schedule B thereof at least ten days prior to the therein indicated due dates of the several respective payments and at the respective times and places which shall be provided for any such payments of interest or into a sinking fund on any new bonds, obligations or mortgages hereafter to be executed by the Original Lessor in accordance 627
with the provisions of the Original Lease, all as provided in said Original Lease, then the Original Lessor shall apply all amounts still in its possession received as rentals on the Original Lease to the payment of such interest and sinking fund; and if, notwithstanding, said interest and sinking fund payments shall not be made in full when and as required, then the Power Company shall have the right to apply all rentals then unpaid by it, whether matured or accrued, towards such interest and sinking fund payments as shall have not been so paid or provided for

by the Original Lessor, and if there shall still remain due and unpaid any amount of either interest or sinking fund, then and in every such case the Power Company may pay the balance required to prevent such default, and the Power Company shall be entitled to be reimbursed for all such payments made by it, with interest thereon, in excess of its matured or accrued rentals by appropriation to that purpose of all rentals payable thereafter by any other lessee or sublessee in excess of the amounts required to make such accruing interest and sinking fund payments, and the Power Company shall, to the extent of its payments, be subrogated to all the remedies of the Original Lessor in the premises.

For the purposes of this section only, all sums payable by the Power Company under clause Sixth of Article III, of the agreement Exhibit X shall be treated as if rentals.

SECTION 4. In consideration of the consent to this agreement of the New Haven Company, which is hereby given, the other parties hereto severally agree and stipulate that nothing herein contained shall enlarge the obligations or impair the rights of the New Haven Company under said Original Lease or as Guarantor under said Guarantee bearing the same date appended thereto or as a party to said instruments in writing hereinabove referred to as Exhibits Z, X, B, C, D, G and H, or shall require the New Haven Company to assume any obligation or liability as lessor, lessee, guarantor, endorser, surety or otherwise in respect of the securities of any of the other parties hereto, and the New Haven Company agrees that nothing herein contained shall impair or diminish its liabilities or obligations under the above named instruments.

631

SECTION 5. The rights, duties and obligations arising from this agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties hereto.

In Witness Whereof the parties hereto have caused this instrument to be signed by their respective Presidents or one of their respective Vice-Presidents and their corporate seals to be affixed and attested by their respective Secretaries or one of their respective Assistant Secretaries, the day and year first above written.

Signed, sealed and
livered in presence

RNARD M. BERKOWITZ
RENCE A. WARDEN

[CORPORATE SEAL]

CONNECTICUT RAILWAY AND LIGHTING COMPANY 632

By

LEWIS LILLIE
Vice President.

Attest:

G. W. CURRAN
Secretary.

Signed, sealed and
livered in presence

RNARD M. BERKOWITZ
RENCE A. WARDEN

[CORPORATE SEAL]

THE CONNECTICUT LIGHT AND POWER COMPANY

By

IRVIN W. DAY
Vice President. 633

Attest:

C. L. CAMPBELL
Secretary.

Signed, sealed and
livered in presence

M. SOPER
B. BOYLE

[CORPORATE SEAL]

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

By

E. G. BUCKLAND
Vice President.

Attest:

A. E. CLARK
Secretary.

Exhibit A annexed to Proof of Claim.

634

AGREEMENT

BETWEEN

CONNECTICUT RAILWAY AND LIGHTING COMPANY,

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

AND

635 THE CONNECTICUT LIGHT AND POWER COMPANY

DATED APRIL 26, 1921.

THIS AGREEMENT made this 26th day of April A. D., 1921, by and between CONNECTICUT RAILWAY AND LIGHTING COMPANY, (hereinafter called the "Original Lessor"), party of the first part, THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, (hereinafter called the "New Haven Company") party of the second part, and
636 THE CONNECTICUT LIGHT AND POWER COMPANY, party of the third part, all corporations organized and existing under the laws of the State of Connecticut, *Witnesseth:*

WHEREAS the beneficial interest in a majority of the shares of the capital stock of The Connecticut Company (a corporation organized and existing under the laws of The State of Connecticut) is owned by the New Haven Company, the said shares of The Connecticut Company being held by Trustees appointed under and in

pursuance of a decree of the District Court of 637
the United States, Southern District of New York; and

WHEREAS Section Third of the said decree provides *inter alia* as follows:—

"B. They shall sell the said shares at such time or times, together or in parcels, by public auction or private contract, whenever the New Haven Company shall so request or consent, for such prices and upon such terms in all respects (except as provided in paragraph C of this Section) as shall be named 638
by the New Haven Company in a writing signed by its president or the Chairman of its Board of Directors and approved at a meeting by said Board."

"C. The trustees shall exercise their best efforts to complete the sale of the said shares before July 1, 1919, and shall cause any of said shares remaining undisposed of sixty (60) days before that date or such other final date of sale as the Court may fix pursuant to Section Ninth hereof, to be sold at public auction within such sixty (60) days without regard to the provisions in para- 639
graph B of this section for consent or approval by the New Haven Company."

and

WHEREAS by supplemental orders of said Court the time before which the sale of said shares shall be completed has been extended to July 1, 1922; and

WHEREAS it is to the interest of the parties hereto that The Connecticut Company shall ob-

640 tain the benefits contained in the forms of agreements hereto attached, and marked "Exhibit M" and "Exhibit N" respectively;

Now, Therefore, in consideration of the premises and of the mutuality hereof, it is hereby agreed by and between the parties hereto as follows:

SECTION 1: The New Haven Company agrees that if, as and when said decree shall be modified and the shares of the capital stock of The Connecticut Company shall be retransferred to the
641 New Haven Company or to its nominee or nominees with the full rights of ownership in connection with such shares of stock, the New Haven Company will forthwith cause such shares of stock to be voted in favor of the execution and delivery by the officers of The Connecticut Company of said agreements, Exhibits M and N, and upon the execution and delivery of said agreements as aforesaid the New Haven Company agrees to forthwith execute and deliver the same to the Original Lessor for the purpose of execution by it, and thereupon the Original Lessor
642 agrees that it will execute and deliver the same.

SECTION 2: The New Haven Company agrees (*a*) that in the event of a proposed sale of said shares by the said Trustees under the above cited paragraph B, of said decree, it will petition the said Court to enter an order that such execution and delivery of said agreements, Exhibits M and N, by The Connecticut Company shall be a condition of such sale; and (*b*) that in the event that said Trustees shall undertake to cause said shares to be sold under the provisions of

the above cited paragraph C, of said decree, it 643
will petition the said Court to enter a decree prescribing the execution and delivery of said agreements, Exhibits M and N, by The Connecticut Company as a condition of such sale.

SECTION 3: The Original Lessor agrees that nothing herein contained shall enlarge the obligations or impair the rights of the New Haven Company under the Original Lease referred to in said Exhibits M and N, or as Guarantor under said Guarantee bearing the same date appended to said Original Lease, or as a party to said 644
instruments in writing referred to in said Exhibits M and N as Exhibits B, C, D, G and H, or shall require the New Haven Company to assume any obligations or liabilities as lessor, lessee, guarantor, endorser, surety or otherwise in respect of the securities of the Original Lessor, and the New Haven Company agrees that nothing herein contained shall impair or diminish its liability or obligations under the above named instruments.

SECTION 4. It is agreed that the terms of said agreements Exhibits M[1] and N[2] shall not, after 645
the same have been executed and delivered, be cancelled or changed without the written consent of all parties to this agreement.

SECTION 5. The rights, duties and obligations arising from this agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties hereto.

[1] Printed at page 217 of this Record.

[2] Printed at page 224 of this Record.

646 *In Witness Whereof*, the parties hereto have caused this instrument to be signed by their respective Presidents or one of their respective Vice-Presidents and their corporate seals to be affixed and attested by their respective Secretaries or one of their respective Assistant Secretaries, the day and year first above written.

Signed, sealed and delivered in presence of:
BERNARD M. BERKOWITZ
CLARENCE A. WARDEN

CONNECTICUT RAILWAY LIGHTING COMPANY,
By
LEWIS LILLIE
Vice Pre

647 Attest:
G. W. CURRAN
Secretary

[CORPORATE SEAL]

Signed, sealed and delivered in presence of:
H. M. SOPER
R. B. BOYLE

THE NEW YORK, NEW H HARTFORD RAILROAD Co
By
E. G. BUCKLA
Vice Pre

Attest:
A. E. CLARK
Secretary

[CORPORATE SEAL]

648 Signed, sealed and delivered in presence of:
BERNARD M. BERKOWITZ
CLARENCE A. WARDEN

THE CONNECTICUT LIGH POWER COMPANY,
By
IRVIN W. DA
Vice Pre

Attest:
C. L. CAMPBELL
Secretary

[CORPORATE SEAL]

Exhibit A annexed to Proof of Claim.

AGREEMENT

BETWEEN

CONNECTICUT RAILWAY AND LIGHTING COMPANY,

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

AND

THE CONNECTICUT COMPANY

DATED JULY 6, 1926.

THIS AGREEMENT made this 6th day of July, A. D. 1926, by and between CONNECTICUT RAILWAY AND LIGHTING COMPANY (hereinafter called "Original Lessor"), party of the first part, THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY (hereinafter called "New Haven Company"), party of the second part, and THE CONNECTICUT COMPANY, party of the third part, all corporations organized and existing under the laws of the State of Connecticut, *Witnesseth:*

WHEREAS the Original Lessor, the Housatonic Power Company (hereinafter called "Housatonic Company"), The United Electric Light and Water Company (hereinafter called "United Company"), and the New Haven Company, entered into an agreement dated June 27, 1917, for the purposes therein set forth, subdivision Eighth of Article III of said agreement having been amended for the purposes and in the manner set forth in the agreement dated July 23, 1918, be-

652 tween the Original Lessor, Housatonic Company, United Company, New Haven Company and The Connecticut Light and Power Company (hereinafter called "Power Company"). A true and correct copy of said agreement dated July 23, 1918, is hereunto attached, marked "Exhibit Z," and made a part hereof. Attached to said agreement Exhibit Z and made a part thereof, is a true and correct copy of said agreement dated June 27, 1917, marked "Exhibit X," to which latter are attached and made a part thereof certain exhibits, namely, Exhibits A, B, C, D, E and F;
653 Exhibit A being a true and correct copy of the lease (hereinafter referred to as "Original Lease"), dated December 19, 1906, between the Original Lessor and The Consolidated Railway Company (now said New Haven Company); Exhibits B and C being copies of two certain written instruments, both dated February 28, 1910, between the New Haven Company and the Housatonic Company, by the terms of which certain property, real and personal, and franchises demised under the Original Lease, were demised by the New Haven Company to the Housatonic Company upon the terms and conditions in said
654 instruments stated, for the balance of said term of said Original Lease, said property so demised being hereinafter generally termed as the "demised gas and electric properties"; Exhibit D being a true and correct copy of an agreement dated December 30, 1911, between the New Haven Company, Housatonic Company and United Company; Exhibit E being a copy of the agreement of acceptance dated February 28, 1912, which the United Company filed with the Original Lessor; and Exhibit F being the form of agreement of acceptance which the United Company agreed

to execute and file with the Original Lessor, and 655
which the United Company has since executed and delivered; and

WHEREAS after the execution and delivery of said two written instruments dated February 28, 1910, between the New Haven Company and Housatonic Company (Exhibits B and C aforesaid) the New Haven Company and The Connecticut Company executed two certain instruments in writing both dated February 28, 1910, copies of which are hereto attached, marked respectively "Exhibit G" and "Exhibit H," by the terms of which all the property, real and per- 656
sonal, and franchises demised under the Original Lease (except such thereof as had been theretofore demised by the New Haven Company to the Housatonic Company) were demised by the New Haven Company to The Connecticut Company upon the terms and conditions in said instruments stated, for the balance of said term of said Original Lease; said property so demised being hereinafter generally termed as the "demised electric railway properties"; and

WHEREAS since in the event of the termination 657
of the Original Lease for any cause prior to the expiration of the term named therein similar uncertainties would exist and similar claims might be made as to what might occur with reference to the property assigned and sublet under said Exhibits G and H as existed prior to said agreement Exhibit [illegible] in reference to the property assigned and sublet under Exhibits B, C and D, it is therefore advisable that such uncertainties should be removed by agreement; and

WHEREAS new capital in large amounts is necessary to conduct properly the operations of said

demised electric railway properties, and such new capital may not be induced to make such investment unless such agreements shall be made as will more clearly define the intent of the parties; and

WHEREAS the New Haven Company is moved to enter into this agreement in order to obtain the benefits of this agreement for The Connecticut Company, and for the demised electric railway properties:

Now, Therefore, in consideration of the premises and of the mutuality hereof, it is hereby agreed by and between the parties hereto as follows:

SECTION 1. The Original Lessor agrees, that on the contingency of the termination of the Original Lease before the expiration of its term for any cause other than a default by The Connecticut Company, it will treat said The Connecticut Company, its successors and assigns, as entitled to the continuance of the leasehold privileges in said demised electric railway properties conveyed to it by said instruments Exhibits G and H, for the balance of the full term named therein and upon the rentals named therein as if such earlier termination of the Original Lease had not occurred; provided that the rentals agreed to be paid under said two instruments Exhibits G and H shall continue to be paid when and as due, such payments to be made and received in accordance with the provisions of Section 2 hereof, in satisfaction of the obligations of said two instruments Exhibits G and H concerning the payment of rental; the intent being that in case of such earlier termination of the Original Lease, The Connecticut Company, its successors and assigns,

shall not suffer forfeiture but shall hold said 661
demised electric railway properties as if said two instruments Exhibits G and H had been made by the Original Lessor, and that said The Connecticut Company shall be bound to perform the obligations of said two instruments Exhibits G and H as fully and with the same effect as if the Original Lessor were named in each of said instruments as the Lessor.

SECTION 2. As to the rental provided to be paid to the New Haven Company by The Connecticut Company by said instrument Exhibit G, the New Haven Company hereby directs The Connecticut 662
Company to pay for and on account of the New Haven Company.

(*a*) to the parties and at the times and places all as provided in said Original Lease, three-quarters of the respective sums required to pay the interest on bonds and to keep and perform the sinking fund agreements of the Original Lessor; and

(*b*) to the Original Lessor or its order in equal quarterly payments, namely on the first day of February, May, August and November in each 663
and every year (the first payment to be made as of August 1st, 1926), the balance of the rental excluding taxes payable to the New Haven Company under said agreement Exhibit G.

The New Haven Company agrees that all such payments by The Connecticut Company shall be in full satisfaction of the obligations of The Connecticut Company to pay similar amounts to the New Haven Company under the provisions of said two instruments Exhibits G and H, and the Original Lessor agrees that the payments so

made by The Connecticut Company shall be in full satisfaction of the obligations of the New Haven Company to pay similar amounts under the provisions of said Original Lease.

The Original Lessor and The Connecticut Company agree that all such payments so made by The Connecticut Company to the Original Lessor or upon its order as aforesaid shall be receipted for by or for the account of the Original Lessor to the New Haven Company and to The Connecticut Company.

It is understood and agreed that all payments of taxes required to be made by The Connecticut Company under the agreements Exhibits G and H shall continue to be made by said The Connecticut Company as provided therein.

SECTION 3. In consideration of the consent to this agreement of the New Haven Company, which is hereby given, the other parties hereto severally agree and stipulate that nothing herein contained shall enlarge the obligations or impair the rights of the New Haven Company under said Original Lease or as Guarantor under said Guarantee bearing the same date appended thereto or as a party to said instruments in writing hereinabove referred to as Exhibits Z, X, B, C, D, G and H, or shall require the New Haven Company to assume any obligation or liability as lessor, lessee, guarantor, endorser, surety or otherwise in respect of the securities of any of the other parties hereto, and the New Haven Company agrees that nothing herein contained shall impair or diminish its liabilities or obligations under the above named instruments.

SECTION 4. The rights, duties and obligations arising from this agreement shall inure to the

nefit of and shall be binding upon the respec- 667
ve successors and assigns of the parties hereto.

In Witness Whereof the parties hereto have used this instrument to be signed by their respective Presidents or one of their respective ice-Presidents and their corporate seals to be affixed and attested by their respective Secreries or one of their respective Assistant Secaries, the day and year first above written.

ealed and de- CONNECTICUT RAILWAY AND LIGHT-
in presence ING COMPANY
668
By
DEN PAUL THOMPSON
IGHTON Vice President.
Attest:
I. W. MORRIS
Asst. Secretary.

ealed and de- THE NEW YORK, NEW HAVEN AND
in presence HARTFORD RAILROAD COMPANY
By
STINGS E. G. BUCKLAND
LLIVAN Vice President.
Attest:
669
A. E. CLARK
Secretary.

ealed and de- THE CONNECTICUT COMPANY
in presence By
J. K. PUNDERFORD
Moerius President
APMAN Attest:
E. T. CHAPMAN
Secretary.

Exhibit A annexed to Proof of Claim.

670

AGREEMENT

BETWEEN

CONNECTICUT RAILWAY AND LIGHTING COMPANY,

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

AND

THE CONNECTICUT COMPANY

671

DATED JULY 6, 1926.

THIS AGREEMENT made this 6th day of July, A. D. 1926, by and between CONNECTICUT RAILWAY AND LIGHTING COMPANY (hereinafter called "Original Lessor"), party of the first part, THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY (hereinafter called "New Haven Company"), party of the second part, and
672 THE CONNECTICUT COMPANY, party of the third part, all corporations organized and existing under the laws of the State of Connecticut, *Witnesseth:*

WHEREAS the New Haven Company is the successor to the corporations organized prior to December 19, 1906, under the laws of the State of Connecticut, and upon that date existing as such corporations under the names respectively of The Consolidated Railway Company and The New York, New Haven and Hartford Railroad Company; said corporations, The Consolidated

Railway Company and The New York, New Haven and Hartford Railroad Company having been merged, since December 19, 1906, under the laws of the State of Connecticut, into a single corporation with the powers and under the obligations of both prior corporations, under the name of The New York, New Haven and Hartford Railroad Company; and 673

WHEREAS on December 19, 1906, a lease for 999 years (which has been recorded in the office of the Secretary of State of Connecticut) was executed and delivered from said the Original Lessor to said The Consolidated Railway Company, of certain properties therein generally described as trolley, gas and electric properties. A copy of said lease is attached hereto, marked "Exhibit A." Appended to said lease and recorded with it as a part of it is a written guaranty of its performance, executed by the New Haven Company, as that corporation existed on December 19, 1906; and 674

WHEREAS through the said merger of the former New York, New Haven and Hartford Railroad Company with The Consolidated Railway Company the present New Haven Company, some time prior to February 28, 1910, became and is both the Original Lessee and the guarantor of said lease of December 19, 1906; and 675

WHEREAS on February 28, 1910, there were executed between the New Haven Company and the Housatonic Power Company (hereinafter called "Housatonic Company") two instruments in writing, copies of which are attached hereto, marked respectively "Exhibit B" and "Exhibit C" by the terms of which certain of the property, real and personal, and of the franchises demised

676 under the aforesaid lease of December 19, 1906, were demised by the New Haven Company to the Housatonic Company upon the terms and conditions in said instruments stated for the balance of said term, said property so demised being hereinafter generally termed as the "demised gas and electric properties"; and

WHEREAS after the execution and delivery of said two written instruments dated February 28, 1910, between the New Haven Company and Housatonic Company (Exhibits B and C aforesaid) the New Haven Company and The Con-
677 necticut Company executed two certain instruments in writing both dated February 28, 1910, copies of which are hereto attached, marked respectively "Exhibit G" and "Exhibit H," by the terms of which all the property, real and personal, and franchises demised under the Original Lease (except such thereof as had been theretofore demised by the New Haven Company to the Housatonic Company) were demised by the New Haven Company to The Connecticut Company upon the terms and conditions in said instruments stated, for the balance of said term of said
678 Original Lease; said property so demised being hereinafter generally termed as the "demised electric railway properties"; and

WHEREAS said Original Lease contains, *inter alia*, the following covenants:

"The Lessor covenants that for the purpose of discharging the bonded indebtedness shown in Schedule B and such bonded indebtedness as shall hereafter be created under the provisions of this lease, it will upon and in accordance with the written demand of the Lessee at any time during the continuance of this lease, make, execute and

deliver to the Lessee its new bonds or other 679
obligations or evidences of indebtedness (secured by mortgage upon all or part of the demised property if and as the Lessee may desire), and that the bonds or obligations or evidences of indebtedness so issued shall be for such time, and they and any mortgage securing the same shall be in such form and contain such terms, provisions, covenants and conditions as the Lessee shall determine and as the Lessor may lawfully issue. Provided, that the total amount of such bonds, obligations or evidences of indebtedness out- 680
standing at any time shall not be increased beyond the amount of the bonded indebtedness shown in Schedule B, and that the aggregate amount of interest annually payable thereon and of annual payments into any sinking funds shall not exceed the sum of six hundred and seventy-three thousand eight hundred and eighty-two dollars ($673,882), and that the liabilities of the Lessor under such bonds, obligations, evidences of indebtedness and mortgages shall not be more burdensome than at present. And further provided that in case such new bonds, obligations or evidences of indebted- 681
ness should be so drawn as to mature contemporaneously with or at a date later than the expiration of said term, they and any mortgage securing the same shall be in such form and contain such terms, provisions, covenants and conditions as shall be acceptable to the Lessor. The Lessee covenants that it will pay the expenses incident to the issue of any bonds hereafter issued according to the provisions of this lease and the recording of the mortgage securing the same,

682 including the engraving of the bonds, and legal expenses.

"Until payment in full of the principal and interest of all bonds secured by any existing mortgage described in Schedule B or by any mortgage of the demised property or of any part thereof hereafter made in accordance with the provisions of this lease, such mortgages shall constitute a paramount lien upon all the property, contracts, rights, privileges and franchises demised superior to the estate conveyed to the Lessee under this lease.

683 "The Lessor further covenants that upon and in accordance with the written demand of the Lessee, at any time during the continuance of this lease, it will call or cause to be called for purchase or payment, as the Lessee may desire, any of the bonds of the Lessor then outstanding which the Lessor shall have the right to call or cause to be called; provided, that the Lessee shall furnish the necessary funds for such purchase or payment.

. . . . . .

684 "The Lessee also further covenants (provided the Lessor shall keep and perform its covenants herein regarding the execution and delivery to the Lessee of bonds, obligations and mortgages) that during the continuance in force of this lease it will pay the principal of all the bonds described in Schedule B, and of all bonds, obligations or evidences of indebtedness which shall be issued by the Lessor in accordance with the provisions of this lease as the same shall mature or otherwise become payable.

. . . . . .

"It is covenanted and agreed between the 685
Lessor and Lessee that a certain portion of the rentals hereinbefore agreed to be paid by the Lessee to the Lessor, to wit, the annual sum of six hundred and seventy-three thousand eight hundred and eighty-two dollars ($673,882), is intended solely to provide for the payment of interest on bonds and payments into sinking fund, as set forth in said Schedule B, and that if the aggregate amount of the payments due from the Lessor for sinking fund and interest on bonds shall in any year hereafter be less than said sum 686
above named, then and in such case the annual rentals to be paid by the Lessee to the Lessor shall be correspondingly diminished so as not to alter the amount of the balance of rental to be paid to the Lessor for other purposes than for such interest and sinking fund payments. It is further covenanted and agreed between the Lessor and the Lessee that such portion of the rentals paid to the Lessor by the Lessee under this lease as shall be applied to payments into such sinking fund, with all accumulations of interest thereon, shall create a claim of the Lessee 687
upon the Lessor for the entire contents of the sinking fund, at the date of payment of the bonds, to be liquidated at the time when, under the provisions of said sinking fund agreement described in said Schedule B, the bonds in said sinking fund are to be cancelled, and that at such time, and in connection with the delivery to the Lessee by the Lessor of new bonds in substitution for previously existing bonds of the Lessor then to be paid by the Lessee, and on condition that

688 the Lessee shall fulfil its covenants in relation to the payment of the bonds of the Lessor then to be paid by the Lessee, the Lessor will issue and deliver to the Lessee bonds for the principal amount of said claim, which the Lessee agrees to accept in satisfaction thereof, such bonds to be of the same form and secured in the same way and to be part of the same issue as are such new bonds then to be issued by the Lessee as hereinbefore provided."

* * * * *

689 and

WHEREAS in said agreements Exhibits B and G the New Haven Company has covenanted that having theretofore assumed all the indebtedness secured by any lien upon any of the property therein described and agreed to be demised, the New Haven Company would pay said indebtedness and interest when due thereon and save the other parties to said agreements harmless from loss, cost or damage arising out of any defaults in such payment; and

690 WHEREAS the New Haven Company, in said agreement Exhibit C, demised, as part of the demised gas and electric properties, the benefit of all of the covenants and agreements of the Original Lessor contained in the Original Lease so far as they are necessary or convenient for the full beneficial enjoyment of said demised gas and electric properties; and

WHEREAS the New Haven Company, in said agreement Exhibit H, demised, as part of the demised electric railway properties, the benefit of all of the covenants and agreements of the

Original Lessor contained in the Original Lease so far as they are necessary or convenient for the full beneficial enjoyment of said demised electric railway properties; and 691

WHEREAS the New Haven Company is the owner of the beneficial interest in the majority of the shares of the capital stock of The Connecticut Company and the New Haven Company may hereafter desire that its obligations under said Original Lease and under said agreements Exhibits G and H in connection with the indebtedness of the Original Lessor shall be reduced; and

692

WHEREAS new capital in large amounts is re[illegible] time to time to properly conduct the operations of said demised electric railway properties and such new capital may not be induced to make such investments unless such agreement shall be made as will clearly limit the lien of any new bonds which may be issued under and in pursuance of the terms of said Original Lease and as will define and limit the obligations of The Connecticut Company in connection therewith; and

WHEREAS the New Haven Company is moved to enter into this agreement in order to obtain the benefits thereof for The Connecticut Company and for the demised electric railway properties and to be in a position to accomplish a reduction in the liabilities heretofore incurred by the New Haven Company in and about the indebtedness of the Original Lessor: 693

Now, Therefore, in consideration of the premises and of the mutuality hereof it is hereby agreed by and between the parties hereto as follows:

694 SECTION 1. It is stipulated (*a*) that, unless the New Haven Company shall consent thereto in writing, no new bonds (other than such new bonds as may be issued to refund any outstanding bonds specified in Schedule B, Exhibit A, not theretofore acquired by and contained in the sinking fund therein referred to) shall be issued by the Original Lessor under the provisions of the Original Lease set out above in the recitals hereof; (*b*) that if the New Haven Company shall give such consent, the total amount of such new bonds which may be issued in pursuance thereof shall not exceed three-quarters of the
695 total amount of new bonds the issue of which might be demanded under the Original Lease and that no part of any such new bonds shall be secured by any lien upon the demised gas and electric properties; and (*c*) that if when the First and Refunding Mortgage 4½% 50-Year Gold Bonds of the Original Lessor become payable, there shall remain outstanding any of said bonds or any of said underlying bonds specified in said Schedule B of Exhibit A, not acquired for the sinking fund, new bonds may be issued for the purpose of refunding the same as pro-
696 vided in said covenants referred to above in the recitals hereof, provided, however, that not exceeding three-quarters of the total of such new bonds may be secured by a lien upon the demised electric railway properties.

SECTION 2. When the First and Refunding Mortgage 4½% 50-Year Gold Bonds of the Original Lessor become payable and any new bonds are issued as provided in Section 1 above, the rental of The Connecticut Company shall be reduced by an amount equal to the difference between three-quarters of the annual sinking fund and

interest payments of the Original Lessor on its 697
said bonds and the annual interest and sinking fund payments required upon any of the new bonds secured by lien upon the demised electric railway properties. Thereafter, as any such new bonds secured by lien upon the demised electric railway properties shall, from time to time, be paid or retired, through operation of any sinking fund or otherwise, and not refunded, the annual rental payable by The Connecticut Company shall be reduced by an amount equal to the annual interest and sinking fund payments theretofore required in connection with such paid or retired bonds, so that, ultimately, should all such 698
bonds be paid and not refunded, the maximum rental payable hereunder, not including taxes, shall not exceed $544,588.50 a year.

Section 3. The Original Lessor agrees that if so much of the rentals payable under said Original Lease as are required to pay the interest upon bonds and to keep and perform the sinking fund agreements of the Original Lessor shall not be paid in full at the places indicated in Schedule B thereof at least ten days prior to the therein indicated due dates of the several respective payments and at the respective times and places which shall be provided for any such payments 699
of interest or into a sinking fund on any new bonds, obligations or mortgages hereafter to be executed by the Original Lessor in accordance with the provisions of the Original Lease, all as provided in said Original Lease then the Original Lessor shall apply all amounts still in its possession received as rentals on the Original Lease to the payment of such interest and sinking fund; and if notwithstanding said interest and sinking fund payments shall not be made in full when and as required, then The Connecticut

Company shall have the right to apply all rentals then unpaid by it, whether matured or accrued, towards such interest and sinking fund payments as shall have not been so paid or provided for by the Original Lessor, and if there shall still remain due and unpaid any amount of either interest or sinking fund, then and in every case The Connecticut Company may pay the balance required to prevent such default, and The Connecticut Company shall be entitled to be reimbursed for all such payments made by it, with interest thereon, in excess of its matured or accrued rentals by appropriation to that purpose of all rentals payable thereafter by any other lessee or sublessee in excess of the amounts required to make such accruing interest and sinking fund payments, and The Connecticut Company shall, to the extent of its payments be subrogated to all the remedies of the Original Lessor in the premises.

Section 4. In consideration of the consent to this agreement of the New Haven Company, which is hereby given, the other parties hereto severally agree and stipulate that nothing herein contained shall enlarge the obligations or impair the rights of the New Haven Company under said Original Lease or as Guarantor under said Guarantee bearing the same date appended thereto or as a party to said instruments in writing hereinabove referred to as Exhibits B, C, D, G and H, or shall require the New Haven Company to assume any obligation or liability as lessor, lessee, guarantor, endorser, surety or otherwise in respect of the securities of any of the other parties hereto, and the New Haven Company agrees that nothing herein contained shall impair or diminish its liabilities or obligations under the above named instruments.

SECTION 5. The rights, duties and obligations arising from this agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties hereto. 703

In Witness Whereof the parties hereto have caused this instrument to be signed by their respective Presidents or one of their respective Vice-Presidents and their corporate seals to be affixed and attested by their respective Secretaries or one of their respective Assistant Secretaries, the day and year first above written.

ned, sealed and de-
vered in presence of:
N. OGDEN
L. DEIGHTON

SEAL]

CONNECTICUT RAILWAY AND LIGHTING COMPANY 704
By
PAUL THOMPSON
Vice-President.
Attest:
I. W. MORRIS
Asst. Secretary.

ned, sealed and de-
livered in the pres-
ence of:
E. HASTINGS
J. SULLIVAN

SEAL]

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY
By
E. G. BUCKLAND
Vice-President. 705
Attest:
A. E. CLARK
Secretary.

ned, sealed and de-
vered in presence of:
M. F. MOEBIUS
T. CHAPMAN

SEAL]

THE CONNECTICUT COMPANY,
By
J. K. PUNDERFORD
President
Attest:
E. T. CHAPMAN
Secretary.

706 In the

DISTRICT COURT OF THE UNITED STATES

For the District of Connecticut

In Proceedings for the Reorganization of a Corporation

In the Matter of The Connecticut Company, Debtor.	No. 16587

707

Debtor's Motion to Strike Out Connecticut Railway & Lighting Company's Proof of Claim

Now comes the Connecticut Company, Debtor herein, and moves that the proof of claim heretofore filed in this proceeding by Connecticut
708 Railway & Lighting Company, hereinafter called the Claimant, be stricken from the files on the ground that the Claimant is not a creditor of the Debtor and has no claim of any character against the Debtor or its property.

In support of its said motion the Debtor respectfully alleges as follows:

1. The Claimant's alleged claim relates solely to certain properties and franchises designated in its proof of claim as "the demised street railway properties." These properties and franchises, together with certain gas and electric

properties, were leased by the Claimant on or about December 19, 1906 to the predecessor of The New York, New Haven and Hartford Railroad Company, hereinafter called the New Haven, and the demised street railway properties were subleased by the New Haven to the Debtor on February 28, 1910. 709

2. From February 28, 1910 to December 17, 1935 the Debtor held and operated the demised street railway properties under and by virtue of the said sublease from the New Haven. Its rights and duties arose out of and were defined by that instrument. It was not a party to the lease of 1906, nor was the Claimant a party to the sublease. Those documents created no privity of contract between the Debtor and the Claimant. 710

3. The sublease from the New Haven to the Debtor was at all times by its express provisions subject to termination by the joint action of the sublessor and the sublessee without the consent, or the prior knowledge, of the Claimant. There was no way in which the Claimant could hold the Debtor to its terms or prevent its cancellation. 711

4. Contrary to the allegation contained in paragraph 6 of Claimant's proof of claim, the Debtor did not reject the sublease of February 28, 1910 from the New Haven. The Debtor and the New Haven on or about December 17, 1935 terminated the said sublease by an agreement in writing in accordance with the provision contained in the last paragraph thereof. As required by that paragraph a copy of the said agreement was promptly delivered to the Claimant.

712 5. Since December 17, 1935 the Debtor has continued to hold and operate the said demised street railway properties as agent for the New Haven. In that capacity it owes no duty or obligation to the Claimant.

6. All of the claims for damages asserted by the Claimant in its proof of claim arise out of alleged failure to comply with the requirements of the lease of 1906 or the sublease. Notwithstanding general averments of disregard of obligations under the lease, the sublease "and other executory agreements hereinbefore referred to",
713 the proof of claim does not specify any violation of any contract other than the lease or the sublease.

7. In view of the facts and for the reasons above outlined the Debtor respectfully submits that the Claimant is not a creditor of the Debtor, does not hold a claim of any character against it or its property and has not been injured by the rejection by the Debtor of any executory contract or unexpired lease.

714 WHEREFORE the Debtor prays that the proof of claim heretofore filed herein by the Claimant may be stricken from the files.

THE CONNECTICUT COMPANY,
By JAMES GARFIELD,
its Attorney.

Dated: April 21, 1936.

In the 715

DISTRICT COURT OF THE UNITED STATES

For the District of Connecticut

In Proceedings for the Reorganization of a Corporation

In the Matter of The Connecticut Company, Debtor.	No. 16587

716

Answer of Connecticut Railway and Lighting Company

Answering the motion by the Debtor to strike out the proof of claim of Connecticut Railway and Lighting Company, the said Claimant respectfully shows the Court:

1. The demised street railway properties belonging to the Claimant were leased to the predecessor of The New York, New Haven & Hartford 717
Railroad Company by lease dated December 19, 1906, which lease contains the following provision:

> "The Lessee shall have the right at any time, subject to the provisions hereof to assign, sublet, pledge or mortgage this lease and any or all its rights thereunder, provided that when such assignment, sublease, pledge or mortgage shall be made, the Lessee shall in writing notify the Lessor thereof, specifying the date of the instru-

718 ment and the name of the assignee, sub-lessee, pledgee or mortgagee, and thereupon any assignee other than a pledgee or mortgagee shall file with the Lessor its agreement to accept the provisions of such conveyance, together with all the obligations and undertakings assumed by the original Lessee regarding or affecting the assigned property, whereupon said assignee shall be entitled to all the benefits conferred and be subject to all obligations imposed upon the Lessee under the terms of this instrument
719 with the same effect as if such assignee were to the extent of the property assigned the original contracting party." (Book, pages 19-20.)

2. Under date February 28, 1910 an agreement was entered into between The New York, New Haven & Hartford Railroad Company and The Connecticut Company, containing the following provision:

"The Connecticut Company also agrees to perform all the lessee's obligations under said lease of December 19, 1906, affecting or
720 connected with the property to be sublet to The Connecticut Company." (Book, pages 41-42.)

3. Under date February 28, 1910 a further agreement was entered into between The New York, New Haven & Hartford Railroad Company and The Connecticut Company, which contained the following provision:

"It is mutually covenanted and agreed, by and between the Railroad Company and The

Connecticut Company, that this assignment 721
and sublease shall be effectual only subject to all the provisos contained in said lease of Decem ber 19, 1906, which limit the right of the lessee under said lease to assign, sublet, pledge, or mortgage said lease and any or all of its rights thereunder.

In consideration of the premises, and for the purposes of complying with the aforesaid limiting provisos of said lease dated December 19, 1906, The Connecticut Company hereby agrees to accept all the provisions of this conveyance, together with all the obligations 722
and undertakings assumed by the original lessee, regarding or affecting the property herein assigned and sublet." (Book, page 48.)

4. Under date July 6, 1926 a tripartite agreement was made between Connecticut Railway and Lighting Company, The New York, New Haven & Hartford Railroad Company and The Connecticut Company, containing the following provision:

"SECTION 2. As to the rental provided to be 723
paid to the New Haven Company by The Connecticut Company by said instrument Exhibit G, the New Haven Company hereby directs The Connecticut Company to pay for and on account of the New Haven Company.

(a) To the parties and at the times and places all as provided in said Original Lease, three-quarters of the respective sums required to pay the interest on bonds and to keep and perform the sinking fund agreements of the Original Lessor; and

724 (b) to the Original Lessor or its order in equal quarterly payments, namely on the first day of February, May, August and November in each and every year (the first payment to be made as of August 1st, 1926), the balance of the rental excluding taxes payable to the New Haven Company under said agreement Exhibit G.

The New Haven Company agrees that all such payments by The Connecticut Company shall be in full satisfaction of the obligations of The Connecticut Company to pay similar
725 amounts to the New Haven Company under the provisions of said two instruments Exhibits G and H, and the Original Lessor agrees that the payments so made by The Connecticut Company shall be in full satisfaction of the obligations of the New Haven Company to pay similar amounts under the provisions of said Original Lease.

The Original Lessor and The Connecticut Company agree that all such payments so made by The Connecticut Company to the Original Lessor or upon its order as afore-
726 said shall be receipted for by or for the account of the Original Lessor to the New Haven Company and to The Connecticut Company.

It is understood and agreed that all payments of taxes required to be made by The Connecticut Company under the agreements Exhibits G and H shall continue to be made by said The Connecticut Company as provided therein." (Books, pages 196-197.)

Exhibit G, referred to in said provision, is 727
the agreement dated February 28, 1910 referred to in paragraph hereof numbered 2, and Exhibit H, referred to in said provision, is the agreement dated February 28, 1910 referred to in paragraph hereof numbered 3.

5. Where performance of a promise in a contract will benefit a person other than the promisee, that person is a creditor beneficiary, if performance of the promise will satisfy an actual or supposed duty of the promisee to the beneficiary. (*A. L. I., Restatement Contracts,* § 133.) 728

(a) A promise to discharge the promisee's duty creates a duty of the promisor to the creditor beneficiary to perform the promise. (*A. L. I., Restatement Contracts,* § 136.)

(b) A creditor beneficiary who has an enforceable claim against the promisee can get judgment against either the promisee or the promisor, or against each of them on their respective duties to him. (*A. L. I., Restatement Contracts,* § 141.)

(c) A discharge of the promisor by the promisee in a contract or a variation thereof by them 729
is ineffective against a creditor beneficiary if the action is a fraud on creditors. (*A. L. I., Restatement Contracts,* § 143.)

6. By order of this Court dated December 7, 1935, the Debtor was ordered to reject, disaffirm, rescind or otherwise terminate the following executory contracts.

The two agreements dated February 28, 1910, between the Debtor and The New York, New Haven and Hartford Railroad Company, referred to in paragraphs 2 and 3 hereof;

730 The two agreements dated July 6, 1926 between the Claimant and the Debtor and The New York, New Haven and Hartford Railroad Company, one of which is referred to in paragraph 3 above.

At the time of the termination of said contracts, both The New York, New Haven and Hartford Railroad Company and the Debtor were in the custody and control of this Honorable Court, completely subject to the Court's directions, and, of the agreements so terminated, the only one which was terminable by its terms by action of
731 the parties thereto is the assignment or sublease of the demised street railway properties dated February 28, 1910. Obviously, all the said agreements were rejected by the Court; but if it be said that the said assignment and sublease dated February 28, 1910 was terminated by action of the parties thereto, then such action constitutes a fraud on this Claimant, inasmuch as it was an attempt by the Debtor to divest itself of property owned by it, and of obligations owed by it, of which obligations the Claimant was creditor beneficiary, at a time when the Debtor, which was
732 the promisor under the agreements, was a wholly owned subsidiary of the promisee, The New York, New Haven and Hartford Railroad Company, and both corporations were admittedly insolvent.

7. The Claimant denies that the Debtor has, since December 17, 1935 held and operated the demised street railway properties owned by the Claimant, as the agent for The New York, New Haven and Hartford Railroad Company. The Claimant alleges that the Debtor has held and

operated the said properties as the representative of this Honorable Court pending either the outcome of reclamation proceedings by the Claimant, which is the true owner, or arrangements for the continuance of said operation which shall be part of a Plan of Reorganization of the Debtor. This Honorable Court has a responsibility to protect the Claimant in the ownership of its property, and in the receipt of the income therefrom during this period of judicial control, which is as important as the duty to protect the Debtor. 733 734

WHEREFORE, the Claimant prays that its proof of claim be allowed, and that appropriate proceedings be had for its protection.

Dated: April 28, 1936.

EMMET, MARVIN & MARTIN,
Attorneys for Claimant, Connecticut Railway and Lighting Company,
Office & P. O. Address:
48 Wall Street,
Borough of Manhattan, 735
City of New York.

GEORGE W. MARTIN,
Of Counsel.

736 DISTRICT COURT OF THE UNITED STATES

DISTRICT OF CONNECTICUT

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor.	In Bankruptcy Under Section 77B No. 16587

Memorandum of Decision on Debtor's Motion to Strike Out Claim of Connecticut Railway & Lighting Company

737 The Connecticut Railway & Lighting Company (hereinafter called the "original lessor") seasonably filed a substantial proof of claim against the debtor herein. The debtor then moved to strike out this proof of claim on the ground that the original lessor is not a creditor of the debtor. Upon this motion of the debtor, the matter is now before the court.

738 ### FACTS

1. On December 19, 1906, the original lessor leased all its property to the Consolidated Railway Company for a term of 999 years. For purposes of the pending motion the property, which was the subject matter of this lease, may be classified as follows: (a) a group of gas and electric properties, and (b) a group of electric street railway properties. By the terms of this lease the lessee covenanted to pay directly all taxes upon the demised properties and in addition the

further sum of $1,400,000 annually, out of which 739
interest charges on the original lessor's bonded indebtedness and its sinking fund requirements were to be paid by the lessee directly to those entitled thereto and the balance only to the original lessor.

2. This lease was contemporaneously guaranteed by the New York, New Haven & Hartford Railroad Company (hereinafter called the "New Haven"). Thereafter, in 1907, the New Haven and the Consolidated Railway Company became merged so that the New Haven became the lessee 740
as well as guarantor under said lease (hereinafter referred to as the "main lease").

3. On February 28, 1910, the New Haven entered into an agreement with the debtor herein, then and ever since a wholly owned and completely controlled subsidiary of the New Haven, whereby the New Haven agreed to "demise and sublet unto" the debtor all the electric street railway properties included in said main lease, and the debtor agreed to pay to the New Haven three-quarters of the rental stipulated in the 741
main lease. And on the same day a written instrument in the form of a sublease was executed and delivered, effectuating said agreement. This "sublease", if such it was, contained the following provision:

> "All the foregoing provisions of this instrument are subject to the condition that the life of this instrument may at any time be terminated by an agreement in writing of the parties hereto, whereupon all the rights

742 of The Connecticut Company in and to the franchises and property conveyed by this instrument shall be restored to the Railroad Company and be by it possessed as fully as if this instrument had never been executed; provided, however, that a copy of such agreement between the parties hereto shall be promptly delivered to the said Connecticut Railway and Lighting Company."

4. Likewise on February 28, 1910, the New Haven entered into a similar agreement with 743 Housatonic Power Company to "demise and sublet" to that Company the gas and electric properties included in the main lease for an annual rental amounting to one-quarter of the rental stipulated in the main lease. This agreement also was effectuated by written instrument on the same day and the possession and operation of the gas and electric properties by a succession of transfers is now vested in the Connecticut Light and Power Company which is no part of the New Haven's system.

744 5. By written instrument dated July 26, 1926, by and between the original lessor, the New Haven, and the Debtor herein, a tripartite agreement was entered into which recited that in the event of the termination of the main lease for any cause prior to the expiration of its term, uncertainties as to the rights involved would exist and claims might be made that all the properties, *i. e.*, both the electric street railway and the gas and electric properties, as well as numerous additions thereto made since the date of the main lease, thereupon reverted to the original lessor.

It was therefore in this agreement provided as 745
follows:

"SECTION 1. The Original Lessor agrees that on the contingency of the termination of the Original Lease before the expiration of its term for any cause other than a default by The Connecticut Company, it will treat said The Connecticut Company, its successors and assigns, as entitled to the continuance of the leasehold privileges in said demised electric railway properties conveyed to it by said instruments Exhibits G and H, for the bal- 746
ance of the full term named therein and upon the rentals named therein as if such earlier termination of the Original Lease had not occurred; provided that the rentals agreed to be paid under said "two instruments Exhibits G and H shall continue to be paid when and as due, such payments to be made and received in accordance with the provisions of Section 2 hereof, in satisfaction of the obligations of said two instruments Exhibits G and H concerning the payment of rental; the intent being that in case of such earlier termination of the Original Lease, The Con- 747
necticut Company, its successors and assigns, shall not suffer forfeiture but shall hold said demised electric railway properties as if said two instruments Exhibits G and H had been made by the Original Lessor, and that said The Connecticut Company shall be bound to perform the obligations of said two instruments Exhibits G and H as fully and with the same effect as if the Original Lessor were named in each of said instruments as the Lessor.

748 "SECTION 2. As to the rental provided to be paid to the New Haven Company by The Connecticut Company by said instrument Exhibit G, the New Haven Company hereby directs The Connecticut Company to pay for and on account of the New Haven Company.

(a) to the parties and at the times and places all as provided in said Original Lease, three-quarters of the respective sums required to pay the interest on bonds and to keep and perform the sinking fund agreements of the Original Lessor; and

749 (b) to the Original Lessor or its order in equal quarterly payments, namely on the first day of February, May, August and November in each and every year (the first payment to be made as of August 1st, 1926), the balance of the rental excluding taxes payable to the New Haven Company under said agreement Exhibit G.

The New Haven Company agrees that all such payments by The Connecticut Company shall be in full satisfaction of the obligations 750 of the Connecticut Company to pay similar amounts to the New Haven Company under the provisions of said two instruments Exhibits G and H, and the Original Lessor agrees that the payments so made by The Connecticut Company shall be in full satisfaction of the obligations of the New Haven Company to pay similar amounts under the provisions of said Original Lease.

The Original Lessor and The Connecticut Company agree that all such payments so made by The Connecticut Company to the

Original Lessor or upon its order as aforesaid shall be receipted for by or for the account of the Original Lessor to the New Haven Company and to The Connecticut Company. 751

It is understood and agreed that all payments of taxes required to be made by The Connecticut Company under the agreements Exhibits G and H shall continue to be made by said The Connecticut Company as provided therein.

"SECTION 3. In consideration of the consent to this agreement of the New Haven Company, which is hereby given, the other parties hereto severally agree and stipulate that nothing herein contained shall enlarge the obligations or impair the rights of the New Haven Company under said Original Lease or as Guarantor under said Guarantee bearing the same date appended thereto or as a party to said instruments in writing hereinabove referred to as Exhibits Z, X, B, C, D, G and H, or shall require the New Haven Company to assume any obligation or liability as lessor, lessee, guarantor, endorser, surety or otherwise in respect of the securities of any of the other parties hereto, and the New Haven Company agrees that nothing herein contained shall impair or diminish its liabilities or obligations under the above named instruments. 752 753

"SECTION 4. The rights, duties and obligations arising from this agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties hereto."

754 6. Previously a similar agreement had been entered into between the original lessor, the New Haven and the United Electric Light and Water Company, which was then in possession of the gas and electric properties included in the main lease and later assigned to The Connecticut Light and Power Company.

7. After the 1926 agreement described in Par. 5 above and ever since, the debtor herein continued to make all its payments of rental to the New Haven; the New Haven continued as theretofore to distribute the payments thus received in accordance with the provisions of the main lease; and the original lessor received from the New Haven, and not from the debtor herein, so much of the rental from the electric street railway properties as was not by the New Haven directly applied elsewhere in payment of taxes, etc., under the provisions of the main lease.

755

8. After the institution of these proceedings, the debtor, pursuant to Order No. 6 in these proceedings, by notice to the original lessor, rejected all executory contracts and unexpired leases (except the "sublease" of 1910 described in Par. 3 above) relating to the properties and franchises subject to the main lease of 1906, including the 1926 agreement described in Par. 5 above, and purported to surrender such properties to the trustees of the New Haven, which was then in the course of reorganization in this court under Sec. 77 of the Bankruptcy Act, under an agreement with said trustees to terminate the "sublease" of 1910 as provided in the paragraph thereof quoted in Par. 3 above. The New Haven

756

trustees, by notice to the original lessor, then 757
rejected the main lease of 1906, and ever since, the original lessor having as yet made no demand for reentry or repossession, the debtor has been operating said properties, purporting so to do as agent for the New Haven trustees, the New Haven trustees assuming the responsibility for such operation for the account of the original lessor.

DISCUSSION

Counsel for the debtor have contended that the 758
debtor never assumed any relationship to the properties in question other than that of sublessee. The original lessor contends that the agreements of 1910 were in legal effect an assignment to the debtor *pro tanto*, and that in any event when these proceedings were instituted such a relationship existed between the parties as to furnish a basis for the claim which the debtor now seeks to delete.

I incline to the view that under the 1910 agreements the debtor was a sublessee. But whether so or not, I must hold that the 1926 agreement 759
created at least a direct contractual obligation between the debtor and the original lessor. The language of the 1926 agreement permits of no other construction and there is nothing in the record to negative the intent disclosed by such language.

It is argued for the debtor that the language of the 1926 agreement (Section 2), wherein the New Haven "directs" the debtor to pay as therein provided, gave the debtor a permission

760 or option so to pay the rent, but imposed no positive obligation to pay. The contention, however, is unfounded. For surely the express direction with respect to the payment of rent indicated an intent on the part of the New Haven to assign the rent to the parties entitled thereto under the main lease. It is elementary that such an assignment becomes effective upon notice to the obligor. Here, the participation by the debtor in the agreement conclusively establishes the receipt of such notice and the corresponding shift in the debtor's obligation. The debtor,
761 having assented to its obligee's "direction", in effect agreed to discharge its obligation accordingly. It thereby became obligated,—not merely privileged.

Section 1 of the 1926 agreement, by its express terms, deals only with the "contingency of the termination of the original lease before the expiration of its term for any cause other than a default by The Connecticut Company." In such a contingency, the intent is expressly stated to be "that said The Connecticut Com-
762 pany *shall be bound* to perform the obligations of said two instruments (i.e., those of 1910) as fully and with the same effect as if the original lessor were named in each of said instruments as the lessor". Clearly, therefore, if the contingency specified came to pass, the debtor then would be under a positive obligation, as distinguished from an option or mere privilege, to pay as therein specified. Having thus, in Section 1, clearly defined the lessor's obligation upon the happening of that contingency, the agreement in Section 2 omits all reference to that contin-

gently and by the very generality of the lan- 763
guage used indicates that the provisions of Section 2 are applicable irrespective of the happening of that contingency.

Moreover, the final paragraph of Section 2, quoted above, further indicates an intent to impose more than an option or privilege upon the debtor. Exhibits G and H, therein referred to, are the agreements of 1910 between the New Haven and The Connecticut Company. There are no provisions in these 1910 agreements expressly dealing with the payment of taxes, but only the general agreement on the part of the 764
debtor to pay to the New Haven three-fourths of the rental provided in the main lease. The main lease, as stated above, provided that the New Haven should pay *by way of rental* not only a stated sum but also all taxes, etc., "said payments to be made to the authority or treasurer entitled by law to receive the same, whether federal, state or municipal". And so, when, by the final paragraph of Section 2 of the 1926 agreement, it was thus provided that "all payments of taxes . . . shall continue to be made 765
by said The Connecticut Company" through the New Haven to the tax authority as theretofore, it is further indicated that by the first paragraph of Section 2 it was intended that, with respect to all rental payments excepting payments on account of taxes, the debtor no longer should have the right or option to continue its payments as theretofore but on the contrary was obligated to pay them as therein "directed".

The language of Section 2 of the 1926 agreement contains one further unmistakable indica-

766 tion that the debtor's obligation to pay rent as therein "directed" was to become immediately effective rather than to depend upon the contingency of the specified termination of the main lease. For in sub-paragraph (b) thereof it is provided that the first payment of rent to the original lessor is "to be made as of August 1st, 1926"; the agreement was dated July 6, 1926. Surely the unqualified provision for a payment on the following August 1st shows that the obligation was independent of a premature termination of the main lease. It is also inconsistent
767 with an intention to create only a permission or option rather than a positive obligation.

Nevertheless, as above stated, the fact is that after the 1926 agreement the debtor and the New Haven made their payments as theretofore. Counsel for the debtor accordingly points to that fact as indicating an intent that the agreement conferred merely an option or privilege. The contention however loses force when one considers that throughout the debtor has been a wholly owned subsidiary of the New Haven.
768 That being so, as between the New Haven and the debtor, it was solely a matter of book-keeping, at least until a breach occurred, as to whether the debtor should make the payments directly, or indirectly through the New Haven. The course of dealing therefore indicates nothing with respect to the substantive rights of the parties, but merely a willingness on the part of the original lessor to acquiesce in the book-keeping arrangements of its obligors. If the original lessor had returned checks of the New

Haven, demanding checks of the debtor in lieu 769
thereof, it would have been considered punctilious in the extreme. Its acquiescence in the payments through the New Haven betokens merely the conduct to be expected of sensible, practical men of business and not at all an intent at direct variance with that clearly indicated in the 1926 agreements.

CONCLUSIONS

I hold, therefore, 770

1. That when these proceedings were instituted, the debtor, under the provisions of the 1926 agreement, was under a direct contractural obligation to the original lessor.

2. That upon the debtor's rejection of the 1926 agreement, the original lessor became entitled to file a claim and to be heard thereon.

It is accordingly,

771

ORDERED, that the debtor's motion be denied.

Dated at New Haven this 22nd day of July, 1936.

CARROLL C. HINCKS,
United States District Judge.

772 IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT.

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor. } No. 16587

773

Answer of Debtor to Proof of Claim of Connecticut Railway and Lighting Company, Debtor's Proof of Set-Off and Counterclaim

Now comes Howard S. Palmer, who makes oath and says that he is President of The Connecticut Company, the Debtor herein, and is duly authorized to make this answer to the proof of claim of Connecticut Railway and Lighting Company (hereinafter referred to as "claimant") and this proof of set-off and counterclaim on behalf of the Debtor, and for such answer and proof of set-off and counterclaim he says as follows:

774

1. The Debtor denies

(a) that it was or is indebted to the claimant on account of the claims set forth in the claimant's proof of claim or any of them, or any other claims or matters whatsoever;

(b) that the claimant is a creditor of the Debtor or a person injured by the rejection by the Debtor of any executory contract or unexpired lease; 775

(c) that the Debtor is or since November 16, 1936 has been in possession of any property or franchises of the claimant or that the claimant is entitled to the surrender, redelivery, conveyance, transfer or assignment of any such property or franchises.

The Debtor admits that prior to November 16, 1936 it was in possession of certain property and franchises of the claimant, first as sub-lessee of The New York, New Haven and Hartford Railroad Company (hereinafter referred to as the New Haven) and later as agent of the New Haven or its Trustees, but denies that it is now or ever was in possession of any property or franchises of the claimant under circumstances giving rise to any direct contractual relationship between it and the claimant. 776

If it shall be finally determined and adjudicated, as indicated in the Court's Memorandum of Decision on Debtor's Motion to Strike Out Claim of Connecticut Railway and Lighting Company, entered on July 22, 1936 in these proceedings, that "when these proceedings were instituted, the Debtor, under the provisions of the 1926 agreement (agreement of July 6, 1926 between the claimant, the New Haven and the Debtor), was under a direct contractual obligation to the original lessor," and upon the Debtor's rejection of that agreement claimant "became entitled to file a claim and to be heard thereon," the Debtor 777

778 denies that it is now or ever was in possession of any property or franchises of the claimant under circumstances giving rise to any direct contractual relationship between it and the claimant except as indicated in that Memorandum of Decision, to wit, with relation to "the rental provided to be paid to the New Haven Company by The Connecticut Company by said instrument Exhibit G (the sublease of February 28, 1910)" from August 1, 1926 until October 23, 1935, the date as of which the lease from claimant to the New Haven was rejected.

779

2. The Debtor admits the allegations in paragraph 1 of claimant's proof of claim that by an agreement dated December 19, 1906 claimant leased to The Consolidated Railway Company certain property and franchises and that the obligations of The Consolidated Railway Company thereunder were guaranteed by The New York, New Haven and Hartford Railroad Company, but denies that the said guarantor was the present New Haven Railroad. The Debtor alleges that the said guarantor company was merged into The
780 Consolidated Railway Company in 1907 and the name of the merged company was thereupon changed to The New York, New Haven and Hartford Railroad Company, the present corporation of that name. The Debtor further alleges that by the said merger the obligation of guaranty under the said agreement of December 19, 1906 was merged into the lessee's obligation thereunder and thus extinguished.

3. The Debtor admits that under date of February 28, 1910 the New Haven made an agree-

ment with and a sublease to the Debtor covering 781
a portion of the property subject to the lease of December 19, 1906 as alleged in paragraph 3 of the proof of claim. It neither admits nor denies the other allegations of said paragraph, but refers to the sublease and agreement therein mentioned as the best evidence of their terms. The Debtor further alleges that the said sublease was at all times expressly subject to termination by the joint action of the New Haven and the Debtor without the consent or prior knowledge of the claimant; that the rights and duties of the Debtor 782
arose out of and were defined by the said sublease and agreement; that the Debtor is not and never has been a party to the lease of December 19, 1906, and that the claimant is not and never has been a party to the sublease and agreement of February 28, 1910.

4. The Debtor admits that the New Haven under date of February 28, 1910 and December 30, 1911 entered into certain agreements with various companies as alleged in paragraph 4 of claimant's proof of claim, but neither admits nor denies the 783
allegations of that paragraph as to the meaning or effect of those agreements inasmuch as the agreements themselves constitute the best evidence theerof.

5. The Debtor denies that it rejected the sublease dated February 28, 1910 as alleged in paragraph 6 of claimant's proof of claim, and alleges that it and the New Haven and its Trustees on or about December 16, 1935 terminated the said sublease by an agreement in writing made in ac-

784 cordance with the provisions contained in the last paragraph of the said sublease.

6. The Debtor neither admits nor denies the allegations contained in paragraph 8 of claimant's proof of claim, but leaves the claimant to proof thereof if material.

7. The Debtor denies the allegations contained in paragraph 9 of claimant's proof of claim.

8. The Debtor denies that it has been in pos-
785 session of any property of the claimant since November 16, 1936 or has since that time operated any such property as a part of a single system with its own property. The Debtor also denies that it has done or omitted to do any act or thing at any time contrary to the terms of the lease of December 19, 1906, and further denies that claimant has no knowledge of the specific property now constituting the demised street railway properties or that such knowledge is in the sole possession of the Debtor, all as alleged in paragraph 10 of claimant's proof of claim.

786

9. The Debtor denies all allegations in paragraph 11 of the claimant's proof of claim whether made on information and belief or otherwise.

10. The Debtor admits that no judgment has been recovered on any claim of the claimant herein and that the claims, if any, of the claimant are unsecured, as alleged in paragraph 12 of claimant's proof of claim, and denies all other allegations in the said paragraph.

Answer of Debtor to Proof of Claim of Connecticut Railway and Lighting Company, Debtor's Proof of Set-Off and Counterclaim.

11. The Debtor denies, disproves and rejects each and all of the claims set forth by the claimant in its proof of claim. 787

12. Further answering the Debtor denies that the information relative to claimant's property or Debtor's acts in connection therewith is in the Debtor's sole possession or that an order for an accounting in connection therewith is now necessary. It alleges that the claimant's property was turned over by the New Haven or its Trustees to the claimant and was repossessed by the claimant on November 16, 1936 pursuant to the provisions of Order No. 107 in the New Haven reorganization proceeding and Order No. 38 in this proceeding, both entered on claimant's petitions. 788

13. Further answering claimant's claim for rent accrued to October 31, 1935, the Debtor says that if it shall be finally determined and adjudicated that claimant, by virtue of the agreement of July 6, 1926, has a direct claim against the Debtor for the rent payable by the Debtor to the New Haven under the terms of the sublease of February 28, 1910 the said claim is limited to October 23, 1935, the date as of which the New Haven's rejection of the 1906 lease became legally effective. 789

14. If contrary to the Debtor's contention, it shall be held finally determined and adjudicated that the Debtor is directly obligated to the claimant under the lease of December 19, 1906, the Debtor asserts the following claims against the

790 claimant by way of set-off or counterclaim or in mitigation of damages.

(1) A counterclaim for the lessee's interest in the contents of the sinking fund referred to in the lease of December 19, 1906, the value of which interest amounted on October 23, 1935, to $3,495,505.96.

(2) A counterclaim for the value of certain extensions of claimant's property. The Debtor and its predecessors in possession of the claimant's property have extended the
791 mileage thereof with the written consent of claimant, by constructing tracks and appurtenances for conveying electricity to operate the same in highways or parts of highways or on private locations between the side lines of which at the time of the execution of the lease of December 19, 1906 there were no tracks, which extensions and appurtenances so constructed constituted part of the property repossessed by the claimant on November 16, 1936 and are now in its possession.
792 Under the terms of the said lease the claimant is required on termination of the lease for any cause, to pay to the lessee the actual value of such extensions and appurtenances appraised at the time of the termination of the lease as physical property. The value of such extensions and appurtenances is not less than $500,000.

(3) A claim in mitigation of damages for the value of other improvements in the claimant's property. The Debtor and its prede-

cessors in possession of the claimant's property, at their sole expense, have made additions, extensions, betterments and improvements thereto and therein other than those described in the preceding claim at a capital cost in excess of six million dollars, of which approximately three and one-half million dollars was expended for such improvements still in service on October 23, 1935. The value of such property still in service should in equity be considered in mitigation of damages claimed by the claimant. 793 794

HOWARD S. PALMER,
President of The Connecticut Company.

Subscribed and sworn to before me this 11th day of February, 1937.

OLGA C. BENGTSON
Notary Public.

JAMES GARFIELD
Attorney for Debtor.

795

796 IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER
OF
THE CONNECTICUT COMPANY,
Debtor.

No. 16587

797

Reply of Connecticut Railway and Lighting Company

NOW comes CONNECTICUT RAILWAY AND LIGHTING COMPANY, by EMMET, MARVIN & MARTIN, its attorneys, and for a reply to the answer of the Debtor herein to the proof of claim of Connecticut Railway and Lighting Company:

(1.) Denies each and every affirmative allegation in the said answer contained in paragraphs numbered 2, 3, 5, and 12 thereof.

798 (2.) For a reply to the counterclaim of the Debtor in said answer, this claimant denies each and every allegation contained in paragraph numbered 14 thereof.

EMMET, MARVIN & MARTIN,
Attorneys for Connecticut Railway
and Lighting Company,
48 Wall Street,
New York City.

GEORGE W. MARTIN,
—Of Counsel.

(Verification omitted in printing.)

PETITION FOR ORDER No. 36. 799

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor	No. 16587

800

Petition of Connecticut Railway and Lighting Company

Now comes Connecticut Railway and Lighting Company, and respectfully represents:

1. The petitioner, Connecticut Railway and Lighting Company, is the owner of certain transportation properties which are now and have been since the filing of the original petition by the Debtor herein on October 31, 1935 in the possession of and operated by the Debtor pursuant to an order of this Court made and entered November 18, 1935. 801

2. The said properties were in the possession of and operated by the Debtor previous to October 31, 1935 under and by virtue of a lease by which the Debtor was the tenant of said proper-

802 ties and the petitioner the landlord thereof, which said lease, together with certain executory contracts in connection therewith, was rejected pursuant to the order of this Court made and entered December 7, 1935.

3. For the period commencing October 31, 1935 and down to the present time the petitioner has received no rent nor any compensation whatever in the nature of rent or for use and occupation by the Debtor of its said transportation properties, but the Debtor has operated the same and
803 collected the revenues therefrom and retained them all, so that the petitioner has been excluded from its property without compensation.

4. The petitioner is entitled to be paid as an expense of the estate-in-administration a reasonable rental for the use of its transportation properties by the Debtor during the said period.

Wherefore, Connecticut Railway and Lighting Company prays that an order be made herein directing:

804 1/ That the Debtor submit its accounts to the Court forthwith so that the Court may ascertain and adjudicate what is a reasonable rental for the use of the said transportation properties.

2/ That the Debtor pay over forthwith such sums as may be found due and owing on account of its use of the said transportation properties for the period beginning October 31, 1935.

3/ That on the ascertainment of the fair rental value of the said properties the Debtor pay over

periodically to the petitioner such amounts as may be found reasonable as compensation for the Debtor's use and occupation of the petitioner's properties.

4/ That a preliminary payment of $50,000 be made by the Debtor forthwith to the petitioner on account of the rental found to be due.

Dated: September 21, 1936.

CONNECTICUT RAILWAY AND LIGHTING COMPANY,
By GARFIELD SCOTT,
Vice-President.

EMMET, MARVIN & MARTIN,
Attorneys for Petitioner,
48 Wall Street,
New York City.

(Verification omitted in printing.)

808 ANSWER TO PETITION FOR ORDER No. 36.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

809 IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor. } No. 16587

Debtor's Answer to Petition of Connecticut Railway and Lighting Company

Now comes the Debtor and for answer to the petition of Connecticut Railway and Lighting
810 Company, dated September 21, 1936, respectfully shows:

1. The Debtor admits that the Petitioner is the owner of certain transportation properties which are now and have, since October 31, 1935, been in the possession of and operated by the Debtor but denies that such possession and operation are pursuant to the order of the Court made and entered on November 18, 1935 in this proceeding. Debtor, on the contrary, is advised and therefore avers that since December 16, 1935 its possession and operation have been continued in the absence of other arrangements ap-

proved by the Court and have been as agent 811
for the Trustees of the property of The New York, New Haven and Hartford Railroad Company.

2. The Debtor admits that the said properties were in its possession and operated by it prior to October 31, 1935 but denies all other allegations contained in paragraph 2 of the petition.

3. The Debtor admits that it has operated the said properties during that period since October 31, 1935 and has collected revenues therefrom 812
and has not paid to the Petitioner any part of the said revenues, but it denies that it has retained all of the said revenues. It further denies that the Petitioner has been excluded from the said property. On the contrary, the Debtor and, as it is advised and therefore avers, The New York, New Haven and Hartford Railroad Company and the Trustees of the latter's property have been at all times since December 17, 1935 and are now willing that the Petitioner should possess and operate the said property.

818

4. The Debtor denies the allegations in paragraph 4 of the petition. The Debtor is advised and therefore avers that the question whether the Petitioner will ever be entitled to be paid anything as an expense of the estate-in-administration cannot be determined until the termination of the period of the Debtor's possession and operation of the said property because even if the Petitioner is entitled to any compensation from anyone for such possession and operation by the Debtor, the measure thereof as a matter

of law cannot exceed the net operating income from the said property for the entire period of such possession and operation. Until the termination of that period the amount of net operating income, if any, cannot be determined.

5. Further answering, the Debtor says that it is ready and willing at any time to submit to the Court its accounts showing the results to date of its operation of the said property, but denies that any sum is now due or payable as an expense of the estate-in-administration for the use of the said property or will become due or payable as such expense until such time as the Debtor's possession and operation of the said property shall have terminated.

WHEREFORE, the Debtor respectfully prays that the petition of Connecticut Railway and Lighting Company, dated September 21, 1936, be denied and dismissed.

Dated: September 29, 1936.

THE CONNECTICUT COMPANY,
By
JAMES GARFIELD
H. J. WELLS
Its Attorneys.

ORDER No. 36. 817

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor. } No. 16587

818

Order Dismissing Without Prejudice Petition of Connecticut Railway and Lighting Company for Payment for the Use of its Transportation Properties Since October 31, 1935

Connecticut Railway and Lighting Company having heretofore duly filed its petition dated September 21, 1936; the Debtor having filed its answer praying that the petition be dismissed; the cause having come on for hearing before me on October 2, 1936 and counsel for the petitioner, the Debtor, and the Federal Emergency Administrator of Public Works having been heard, it 819 is ORDERED:

That the said petition of Connecticut Railway and Lighting Company be and it hereby is denied and dismissed without prejudice, however, to the right of said Connecticut Railway and Lighting Company to renew its petition at the proper time.

ENTER:

CARROLL C. HINCKS,
District Judge

890 PETITION FOR ORDER No. 38.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT.

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

821 IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor	No. 16587

Petition of Connecticut Railway and Lighting Company

Now comes Connecticut Railway and Lighting Company, and respectfully represents:

822 (1.) On December 19, 1906 the petitioner, Connecticut Railway and Lighting Company, as landlord, did enter into a certain lease with The Consolidated Railway Company as tenant, whereby certain real and personal property owned by the petitioner was rented for 999 years to The Consolidated Railway Company, said lease being guaranteed at the same time in so far as performance by the tenant was concerned by The New York, New Haven and Hartford Railroad.

(2.) On February 28, 1910 The New York, New Haven and Hartford Railroad Company,

successor by merger to The Consolidated Rail- 823
way Company, entered into two certain agreements with The Connecticut Company, the Debtor herein, wherein and whereby the said Debtor was let into possession of certain of the said properties, the subject of the aforesaid lease, the said properties being known as the traction properties, and on February 28, 1910 the Debtor herein did take possession of the said traction properties, and has been in possession of the same and has operated the same ever since.

(3.) Thereafter certain agreements were en- 824
tered into by and between The New York, New Haven and Hartford Railroad Company, Connecticut Railway and Lighting Company and The Connecticut Company, wherein and whereby the Debtor assumed the liabilities of the original tenant under the said lease dated December 19, 1906 and undertook to discharge the obligations thereof to Connecticut Railway and Lighting Company, and did thereafter pay the rental reserved in the said lease in so far as it applied to the traction properties, and did perform the covenants in the lease, in so far as the same were performed, until the filing of the petition herein 825
on October 31, 1935. Copies of the said agreements and leases are attached to the petitioner's proof of claim herein and on file.

(4.) On October 31, 1935 this Court made an order herein, being Order No. 1, approving the petition of the Debtor and enjoining and restraining all persons from interfering with or disturbing any portion of the property in possession of the Debtor. On October 31, 1935 the property in possession of the Debtor herein included the traction properties owned by the petitioner.

826 (5.) On November 18, 1935 this Court made an order herein, being Order No. 5, continuing the Debtor in possession of the said property and requiring a report to the Court concerning it.

(6.) On December 7, 1935 this Court held a hearing herein on a report concerning the said properties belonging to the petitioner, and on that date made an order, being Order No. 6 herein, directing that the Debtor reject the leases and executory contracts pursuant to which it had been in operation and possession of the traction properties belonging to Connecticut
827 Railway and Lighting Company, and on December 17, 1935 the Debtor rejected the said leases and executory contracts accordingly, as shown by its report filed herein under date December 18, 1935.

(7.) On January 13, 1936 the Court made an order herein, being Order No. 11, whereby the possession of the traction properties of the petitioner by the Debtor was continued pursuant to the provisions of Order No. 5 of November 18, 1935, and the Debtor has continued in possession and
828 operation of the said properties without interruption from October 31, 1935 to the present time.

(8.) On information and belief the operation by the Debtor of the said traction properties belonging to the petitioner has resulted in substantial profits and net operating income to the Debtor during the period from October 31, 1935 to December 18, 1935, and, from the period December 18, 1935 to this date, has been profitable

and has been for the benefit of the Debtor's 829
estate-in-administration.

(9.) On information and belief the Debtor, during the period December 18, 1935 to July 31, 1936 did, according to its own books and records, earn the sum of $238,426.40 from the operation of the petitioner's properties, of which $127,310.87 has been allocated by the Debtor to net operating income for the same period, and $111,115.53 has been allocated to a depreciation fund for renewals and replacements, none of which, however, has been made. In addition, 830
there are four further items of income for the said period properly to be considered as net operating income from the operation of the petitioner's properties, viz., $9,612.63 from the operation of the New Haven-Bridgeport Bus Line, $6,394.20 from the operation of the Hartford-New Britain Bus Line, $6,953.30 from the operation of the Waterbury Switching Service, and $3,079.06 from transportation during the season of tobacco workers near New Britain on certain tobacco specials.

(10.) No compensation or rent whatever has 831
been paid to the petitioner on account of the use and occupation of its said traction properties for any part of the period October 31, 1935 to this date, but the Debtor has operated the same and collected the revenues therefrom and retained them all, so that the petitioner has been excluded from its property without compensation.

(11.) The petitioner is presently entitled to the return of its said traction properties and to have

832 the Debtor surrender to it both the real and personal property, including both that which was the subject of the original lease and property which has been substituted therefor pursuant to the various leases, assignments and agreements relating thereto.

WHEREFORE, Connecticut Railway and Lighting Company prays that an order be made herein directing:

1.) That the Debtor restore, surrender and
833 turn over to the petitioner on November 16, 1936 all the real and personal property now in the Debtor's possession which belongs to the petitioner.

2.) That the Debtor submit its accounts to the Court forthwith so that the Court may ascertain and adjudicate what is a reasonable rental for the use of the said transportation properties for the period from October 31, 1935 to November 16, 1936, and that such compensation be paid by the Debtor to the petitioner.

834 3.) That the Debtor report promptly to the Court, in advance of a formal accounting, the amount which it now has in its possession as cash net operating revenues from the operation of the petitioner's properties from October 31, 1935 to the date of such report, and that the Debtor pay over such amount in cash to the petitioner without delay.

4.) That a copy of the Debtor's account covering the operation of the petitioner's properties

for the period beginning October 31, 1935 be de- 835
livered to the petitioner, and that the petitioner have a reasonable opportunity to file such objections to the same as shall seem to it necessary or desirable.

Dated: October 9, 1936.

CONNECTICUT RAILWAY AND LIGHTING COMPANY
By GARFIELD SCOTT,
Vice-President.

EMMET, MARVIN & MARTIN, 836
Attorneys for Petitioner,
48 Wall Street,
New York City.

(Verification omitted in printing.)

837

838 ANSWER TO PETITION FOR ORDER No. 38.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

839 IN THE MATTER OF

THE CONNECTICUT COMPANY, Debtor. } No. 16587

Answer of Debtor to Petition of Connecticut Railway and Lighting Company for Return of Property and an Accounting

Now comes the Debtor and for answer to the petition of Connecticut Railway and Lighting Company, dated October 9, 1936, respectfully
840 makes the following denials and allegations:

1. Denies the allegations in paragraph 3 of said petition.

2. Admits that on December 7, 1935 this Court held a hearing herein on a report concerning traction properties belonging to the petitioner, but denies all other allegations in paragraph 6 of said petition.

3. Admits that it has continued in possession and operation of the traction properties of the

petitioner without interruption from October 31, 841
1935 to the present time, but denies that such continuance was pursuant to Order No. 11 herein as alleged in paragraph 7 of said petition.

4. Neither admits or denies the allegations in paragraphs 8 and 9 of said petition, but leaves the petitioner to its proof.

5. Denies that it has retained all the revenues from the use and occupation of petitioner's traction properties since October 31, 1935, and further denies that petitioner has been excluded 842
from its property without compensation as alleged in paragraph 10 of said petition.

6. Further answering the Debtor says:

(a) that it is willing and has at all times since December 17, 1935 been willing that petitioner should repossess itself of its properties now in Debtor's possession; and

(b) that it is ready to submit its accounts to the Court or, if directed by the Court, to the petitioner covering operation of said traction properties from October 23, 1935, 843
the date of the petition for reorganization in this Court of petitioner's lessee, The New York, New Haven and Hartford Railroad Company, to August 31, 1936 and as soon as available after possession by petitioner from the time between August 31, 1936 and the date of repossession in order to show whether and to what extent the operation of said properties from October 23, 1935 until the termination of Debtor's operation thereof shall have resulted in net earnings.

844 WHEREFORE, Debtor prays that the Court deny all prayers contained in the petition which are inconsistent with the terms of paragraph 6 of this answer.

THE CONNECTICUT COMPANY, Debtor,
By
JAMES GARFIELD,
H. J. WELLS,
Attorneys for Debtor.

Dated: October 19, 1936.

845

846

PETITION FOR ORDER No. 107. 847

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor. 848

No. 16562

Petition of Connecticut Railway and Lighting Company

Now comes Connecticut Railway and Lighting Company, and respectfully represents: 849

(1.) On December 19, 1906 the petitioner, Connecticut Railway and Lighting Company, as Landlord, did enter into a certain lease with The Consolidated Railway Company, as Tenant, whereby certain real and personal property owned by the petitioner was rented for 999 years to The Consolidated Railway Company.

(2.) Thereafter, The Consolidated Railway Company was merged into The New York, New

Haven and Hartford Railroad Company, on the accomplishment of which The New York, New Haven and Hartford Railroad Company, the Debtor herein, entered into possession, management and control of the said demised property.

(3.) On February 28, 1910 the Debtor herein entered into two certain agreements with The Connecticut Company, a wholly owned subsidiary of said Debtor, wherein and whereby The Connecticut Company took an assignment of so much of said lease as covered certain traction properties or became the sub-tenant of the said Debtor with respect to the said traction properties, and The Connecticut Company entered into possession of the same and has been in possession and has operated the same ever since.

(4.) On the filing of the petition by the Debtor herein, this Court made an order dated October 23, 1935, being Order No. 1 herein, wherein the Debtor in its discretion was authorized to disaffirm any of its existing contracts or leases, the disaffirmance to be effective when notice thereof, together with proof of service, should be filed of record in this proceeding. This authority was likewise extended to the Trustees in Bankruptcy appointed herein by order of this Court dated November 8, 1935, being Order No. 5 herein.

(5.) On December 14, 1935 this Court made an order authorizing the Trustees and the Debtor herein to terminate the said sublease of the petitioner's property dated February 28, 1910, and it was accordingly terminated.

(6.) On December 18, 1935 the Trustees of the Debtor and the Debtor filed a report to this Court of the service of notice of the rejection of the said lease dated December 19, 1906 from your petitioner to The Consolidated Railway Company, and of the other executory contracts subsidiary thereto, so that all the leases and contracts under and pursuant to which the Debtor herein has claims to possession of your petitioner's property have been rejected heretofore by direction of this Court and the petitioner is entitled to immediate possession of the said traction properties. 853 854

(7.) The said properites are now in possession of The Connecticut Company, and have been in such possession and managed and operated by The Connecticut Company during the entire period since October 23, 1935 to this date, but the petitioner is informed that the Debtor herein has or may have some claim in or to said traction properties in the nature of a reversionary interest or otherwise, which said claim is or may be a cloud on the title to the property or an impediment to the petitioner in repossessing the same. 855

Wherefore, Connecticut Railway and Lighting Company prays that an order be made herein directing and adjudicating:

1.) That the Debtor restore, surrender and turn over to the petitioner on November 16, 1936 all the real and personal property now in the Debtor's possession which belongs to the petitioner.

856 2.) That the Debtor account to the petitioner for any profits, avails or revenues which it has received, or to which it lays claim on account of the operation of the petitioner's said traction properties from October 23, 1935 to November 16, 1936.

3.) That the Debtor give such directions and authorization to The Connecticut Company as may be necessary to reinstate the petitioner in possession of its said traction properties as of November 16, 1936, and that the Debtor there-
857 after have no further claim against the said property or the petitioner.

4.) That the petitioner have such other and further relief in the premises as may be just.

Dated: October 9, 1936.

CONNECTICUT RAILWAY AND LIGHTING COMPANY,
By GARFIELD SCOTT,
Vice-President.

858 EMMET, MARVIN & MARTIN,
Attorneys for Petitioner,
48 Wall Street,
New York City.

(Verification omitted in printing.)

ORDER No. 38. 859

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor, } 860 No. 16587

Order Directing Debtor to Turn Over Property to Connecticut Railway and Lighting Company and Authorizing the Latter to Accept and Operate Same as of November 16, 1936

861

The petition of Connecticut Railway and Lighting Company, dated October 9, 1936, for restoration of its property now in the Debtor's possession having come on for hearing, which was duly noticed, and the Court being fully advised in the premises, it is ORDERED:

1. That the Debtor turn over to said petitioner as of 2:00 A.M. on November 16, 1936 all the real and personal property now in the Debtor's possession which belongs to said petitioner, and that said petitioner is authorized then to accept

and possess said property and, subject to the approval of the Public Utilities Commission of the State of Connecticut, to take over the operation thereof.

2. That the Debtor make, execute and deliver all deeds, assignments or other documents necessary to effect the conveyance and transfer of the aforesaid property, in accordance with the provisions of the preceding paragraph.

3. That the Debtor forthwith submit to said petitioner its accounts covering operation of the said property from October 23, 1935 to October 31, 1935, from November 1, 1935 to December 17, 1935 and from December 18, 1935 to August 31, 1936 and that the Debtor, on or before December 31, 1936, submit to said petitioner its accounts covering operation of the said property from September 1, 1936 to and including November 15, 1936 to the end that the said parties may agree as to the correctness of the said accounts in so far as such agreement is possible and that they shall report to this Court on or before March 15, 1937 the extent to which they are in agreement as to the correctness of the said accounts and the matters, if any, as to which they are not in agreement in order that the Court may adjudicate as to the said accounts and may determine what sum, if any, is payable to said petitioner by reason of the operation of its said property under the administration of this Court.

4. That the Debtor, on November 16, 1936, pending final accounting, advance to said peti-

tioner the sum of $125,000, it being understood 865
that if on final adjudication by this Court it shall turn out that the amount so advanced on account shall exceed the total amount, if any, ultimately found to be due as an expense of administration for the operation of said property, the excess shall be refunded by said petitioner to the Debtor, and the acceptance by said petitioner of such payment on account shall constitute its agreement forthwith to refund such excess upon the entry of an appropriate order by this Court in this proceeding requiring such refund. This order is not an adjudication of the amount due 866
petitioner for said operation nor that any amount is due and is without prejudice to the claim that petitioner is not entitled to any payment for said operation after December 17, 1935.

5. That nothing herein and no action taken hereunder shall prejudice in any way any claim or right which the Debtor may have against the petitioner, or which the petitioner may have against the Debtor existing at this date.

Dated: October 29, 1936.

867

ENTER:

CARROLL C. HINCKS,
District Judge.

868 ORDER No. 107.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER
OF
869 THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor,
No. 16562

Order Directing Trustees to Turn Over Property to Connecticut Railway and Lighting Company and Authorizing the Latter to Accept and Operate Same as of November 16, 1936

870 The petition of Connecticut Railway and Lighting Company dated October 9, 1936 for the restoration of real and personal property which belongs to the petitioner having come on for hearing which was duly noticed, and the Court being fully advised in the premises, it is ORDERED:

1. That the Trustees of the property of the Principal Debtor, and said Debtor, turn over to said petitioner as of 2 A.M. on November 16, 1936 all the real and personal property now in possession of the Debtor or said Trustees which belongs to said petitioner, and that said petitioner is authorized then to accept and possess

the Public Utilities Commission of the State of Connecticut, to take over the operation thereof. 871

2. The Trustees and the Debtor are directed and authorized to make, execute and deliver all deeds, assignments or other documents necessary to effect the conveyance and transfer of the aforesaid property, and are further authorized and directed to give such directions to The Connecticut Company, a wholly owned subsidiary of the Debtor, as may be necessary to carry out this order.

3. That the Debtor account to the Court for any profits, avails or revenues which it has received, or to which it lays claim on account of the operation of the petitioner's traction property mentioned in the petition herein from October 23, 1935 to November 15, 1936, inclusive. This order is not an adjudication of the amount due petitioner for said operation or that any amount is due and is without prejudice to the claim that petitioner is not entitled to any payment for said operation after December 17, 1935. 872

4. That nothing herein and no action taken hereunder shall prejudice in any way any claim or right which the Trustees or Debtor may have against the petitioner, or which the petitioner may have against the said Trustees or Debtor existing at this date. 873

ENTER:

CARROLL C. HINCKS,
District Judge.

874 PETITION FOR ORDER No. 43.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER

875 OF

THE CONNECTICUT COMPANY,
Debtor.

No. 16587

Petition of Connecticut Railway and Lighting Company

NOW comes CONNECTICUT RAILWAY AND LIGHTING COMPANY, and respectfully represents, on information and belief:

876 (1.) The Connecticut Company, the Debtor above named, is being reorganized in these proceedings by this Court pursuant to Bankruptcy Law, Section 77-b.

(2.) The New York, New Haven and Hartford Railroad Company is being reorganized in proceedings in this Court brought under Bankruptcy Law, Section 77, the said proceedings being known as No. 16,562.

(3.) The petitioner, Connecticut Railway and Lighting Company, is a creditor of the said New

Haven Railroad and has duly filed its claim in the 877
proceedings involving that corporation, and likewise is a creditor of The Connecticut Company, the Debtor herein, and has duly filed its claim in this proceeding. The New Haven Railroad has likewise filed a claim against the Debtor herein claiming to be a creditor thereof.

(4.) On the filing of the original petition for reorganization by the New Haven Railroad on October 23, 1935, the New Haven Railroad was represented by Mr. W. W. Meyer and by Mr. H. J. Wells as attorneys. Thereafter, and by 878
order of this Court dated January 8, 1936, Mr. Meyer was given leave to withdraw his appearance for the New Haven Railroad because he had become counsel for Mr. H. S. Palmer, Mr. W. M. Daniels and Mr. James Lee Loomis, who were appointed Trustees for the said New Haven Railroad in the said proceedings, and who have been acting as such Trustees since the date of their appointment by order of this Court dated November 8, 1935 and the filing of their bonds in Court on December 7, 1935. This Court, by
order made December 7, 1935 confirmed the ap- 879
pointment of Mr. W. W. Meyer as counsel for the said Trustees. Mr. Meyer is and has been general counsel for the New Haven Railroad.

(5.) On the filing of the original petition for the reorganization of The Connecticut Company on October 31, 1935, the Debtor herein was represented by its attorneys Mr. W. W. Meyer and Mr. H. J. Wells. Mr. Wells is one of the attorneys for the New Haven Railroad. Mr. James Garfield of Boston is attorney for the New Haven Railroad in the reorganization proceedings involving that corporation, and likewise is one of

880 the attorneys for The Connecticut Company in the above-entitled proceedings. Mr. H. S. Palmer is President of the New Haven Railroad, and is one of the Trustees in Bankruptcy thereof appointed by this Court, and likewise is President of The Connecticut Company. The Connecticut Company has no Trustee in Bankruptcy at present, having been continued in possession with the powers of a trustee by orders of this Court dated respectively November 18, 1935 and January 13, 1936 made in this proceeding.

881 (6.) The New Haven Railroad owns all of the stock of The Connecticut Company and has for many years administered the affairs of said Debtor as a subsidiary of the New Haven Railroad, and the principal office of The Connecticut Company is in the general headquarters of the New Haven Railroad at No. 71 Meadow Street, New Haven, Connecticut. The Comptroller for The Connecticut Company is Mr. G. T. Carmichael, who is also the Comptroller for the New Haven Railroad, and he is the person with whom, by order of this Court, claims in the two pro-
882 ceedings must be filed by the creditors.

(7.) Mr. H. S. Palmer, Mr. W. M. Daniels and Mr. James Lee Loomis, as Trustees under Section 77 of the Bankruptcy Act of the property of the New Haven Railroad, filed a claim against the Debtor herein on or about March 30, 1936 on account of certain debentures of the Debtor in the principal amount of $20,123,000. and interest accrued thereon to October 31, 1935, and on account of certain promissory notes in the principal amount of $3,978,023.98 on account of rentals which the New Haven Railroad paid for and on behalf of The Connecticut Company, together

with interest accrued to October 31, 1935 thereon, and on account of certain other items of lesser amount. Said debentures in the principal amount of $20,123,000. were issued by The Connecticut Company to the New Haven Railroad on July 1, 1931 in consideration of the retirement of $20,123,000. par value of the capital stock of The Connecticut Company originally issued to and then held by the New Haven Railroad. 883

(8.) The 21st Annual Report (1931), of the Public Utilities Commission of the State of Connecticut, being Public Document No. 56, at page 45, reads in part as follows:

884

"Capital stock issued [by The Connecticut Company] and outstanding amounts to $19,877,000, $20,123,000 less than at the close of the year preceding. This decrease in capital stock, however, is reflected in an increase in the Company's long term debt Gold Debentures aggregating $20,123,000 having been issued during the year to retire and cancel 201,230 shares of capital stock. These bonds are all owned by The New York, New Haven and Hartford Railroad Company."

(9.) The annual reports of the New Haven Railroad, in so far as the same affect The Connecticut Company for the years 1930 to 1935 inclusive, indicate that the net income of The Connecticut Company for the years in question is as follows: 885

1930 net income	$1,218,790
1931 net income	498,188
1932 Deficit	1,160,729
1933 Deficit	906,080
1934 Deficit	1,118,202

886 The same annual reports indicate that in the year 1930 there was issued and outstanding capital stock of The Connecticut Company of the par value of $40,000,000; that in 1931 and the years following there was issued and outstanding capital stock in the par value of $19,877,000.

(10.) At all times since the organization of The Connecticut Company, The New York, New Haven and Hartford Railroad Company has owned all the issued and outstanding stock thereof. On July 1, 1931 the New Haven Railroad surrendered
887 for cancellation to The Connecticut Company $20,123,000. par value capital stock of The Connecticut Company, and received in exchange therefor debentures in a principal amount of $20,123,000, thereby changing the position of the New Haven Railroad to the extent of the debentures thus issued to it from that of owner to that of creditor without the advance of any new money or any consideration except as stated. After the said transaction the New Haven Railroad continued as before to be the owner and holder of all the outstanding stock of The Connecticut Com-
888 pany; it continued as before to be the guarantor of the payment of the rental on trolley properties owned by the petitioner herein, but occupied and operated by The Connecticut Company; and it continued as before to manage The Connecticut Company as a wholly owned subsidiary of the New Haven Railroad.

(11.) There is grave doubt but that the transaction whereby the New Haven Railroad changed its position to the extent of $20,123,000. from that of an owner of The Connecticut Company to that of a creditor thereof constitutes a fraud on cred-

itors of the Debtor herein, and it is proper that 889
there should be a complete inquiry and investigation on behalf of all the general creditors of The Connecticut Company into all the circumstances of the transaction in order to determine whether or not the claim of the New Haven Railroad against the Debtor herein should be expunged. As set forth above, it is evident that all the pertinent records of The Connecticut Company are in the possession of the New Haven Railroad, that the Debtor itself is represented in this proceeding by same attorneys who are attorneys for the New Haven Railroad and counsel for the 890
Trustees in Bankruptcy thereof, and that the President and Comptroller of The Connecticut Company are the same persons who are respectively President and Comptroller of the New Haven Railroad, Mr. Palmer, in addition, being one of the Trustees in Bankruptcy for the New Haven Railroad. If the claim of the New Haven Railroad is expunged, it will redound to the benefit of all the general creditors of The Connecticut Company, and so the investigation with regard to the circumstances of the transaction hereinbefore described and the consequent legal steps and pro-
ceedings warranted by the investigation should 891
be undertaken by a trustee or trustees in bankruptcy of The Connecticut Company and the expense thereof paid as an expense of the estate-in-administration, and the petitioner herein should not be required to undertake this matter at its own expense.

Wherefore, the petitioner prays that some disinterested and wholly impartial person or persons, not connected with The New York, New

892 Haven and Hartford Railroad Company nor with The Connecticut Company, be named as trustee or trustees of the property of said, The Connecticut Company, and that such trustee or trustees be authorized by this Honorable Court to make a thorough investigation and inquiry into the circumstances of the claim against the Debtor herein by the Trustees of The New York, New Haven and Hartford Railroad Company, and that they be authorized to employ such independent counsel as may be deemed needful in the premises, and to take such steps as may be necessary and
893 proper for the protection of the property of The Connecticut Company and its general creditors.

Dated: December 23, 1936.

EMMET, MARVIN & MARTIN,
Attorneys for Connecticut Railway and Lighting Company, the Petitioner,
Office & P. O. Address:
48 Wall Street,
New York City.

894

GEORGE W. MARTIN,
Of Counsel.

(Verification omitted in printing.)

IN THE

DISTRICT COURT OF THE UNITED STATES 895

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor } No. 16587

896

Order of Notice, The Connecticut Company

On the petition of Connecticut Railway & Lighting Company, verified December 23, 1936 and filed herein this day, praying that a trustee or trustees of the property of said The Connecticut Company be appointed, it is

ORDERED, that the Debtor, The Connecticut Company, is hereby directed to give notice to its creditors and stockholders by causing publication of a notice directed to such creditors and stockholders, to be made at least once a week for two successive weeks in the New Haven Evening Register, a newspaper published in the City of New Haven, State of Connecticut, of a hearing to be held on January 29, 1937, at 11 o'clock in the forenoon, in the Courtroom occupied by this Court, in the United States Courthouse, New Haven, Connecticut, at which hearing, or any adjournment thereof, this court will determine whether to appoint a trustee or trustees of the Debtor's property or to continue the Debtor in possession

897

898 thereof. The notice of such hearing shall be substantially in the form of the notice annexed hereto, made a part hereof and marked "Exhibit A". When such publication has been completed, the Debtor shall file with the Clerk of this Court its report with respect thereto.

Dated, December 30 1936.

ENTER:

C. C. HINCKS
District Judge.

899

"Exhibit A"

NOTICE TO ALL CREDITORS AND STOCKHOLDERS OF THE CONNECTICUT COMPANY

Pursuant to an order entered December 30, 1936 by the Honorable Carroll C. Hincks, Judge of the District Court of the United States for the District of Connecticut, notice is hereby given
900 that a hearing will be held on January 29, 1937 at 11 o'clock in the forenoon by said Judge in the Courtroom usually occupied by him in the United States Courthouse, New Haven, Connecticut, at which hearing the Court will, pursuant to the provisions of Section 77-b of the National Bankruptcy Act, determine whether to appoint a trustee or trustees of the property of The Connecticut Company or to continue the said Company in possession thereof.

THE CONNECTICUT COMPANY

301

In the 901

DISTRICT COURT OF THE UNITED STATES

For the District of Connecticut

In Proceedings for the Reorganization of a Corporation

In the Matter of The Connecticut Company, Debtor.	No. 16587	902

Report of Publication Directed by Order of December 30, 1936

Now comes the Debtor and respectfully reports:

1. Pursuant to the order of this Court dated December 30, 1936, the Debtor has given notice of a hearing to be held by the Court on January 903
29, 1937, at eleven o'clock in the forenoon in its Court Room in the United States Court House, New Haven, Connecticut, for the determination by the Court at such hearing or any adjournment thereof whether to appoint a trustee or trustees of the Debtor's property or to continue the Debtor in possession thereof, by causing a notice in the form of the notice annexed to said order, made a part thereof and marked "Exhibit A", directed to its creditors and stockholders, to be

published on January 4, 1937 and on January 11, 1937 in the New Haven Evening Register, a newspaper published in the City of New Haven, State of Connecticut.

2. An affidavit of publication is hereto attached showing the publication of the said notice in the aforesaid newspaper on the dates stated.

THE CONNECTICUT COMPANY,
By

H. J. WELLS,
Attorney for Debtor.

Dated: January 13, 1937.

ANSWER OF DEBTOR TO PETITION FOR ORDER No. 43. 907

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

908

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor } No. 16587

Answer of Debtor to Petition of Connecticut Railway and Lighting Company for Appointment of Trustee or Trustees Herein

Now comes the Debtor (hereinafter sometimes called The Connecticut Company) and for answer 909
to the petition of Connecticut Railway and Lighting Company dated December 23, 1936 respectfully makes the following admissions, denials and allegations:

1. Admits that petitioner has filed a claim in the reorganization proceedings of The New York, New Haven and Hartford Railroad Company (hereinafter called the New Haven) and a claim herein, but denies all other allegations in paragraph 3 of said petition and alleges that the Trustees appointed by this Court to administer the property of the New Haven have filed a

910 claim against the Debtor herein claiming to be a creditor thereof.

2. Denies that Mr. H. S. Palmer is "one of the Trustees in Bankruptcy" of the New Haven as alleged in paragraph 5, and alleges that said H. S. Palmer is one of the Trustees of the property of the New Haven appointed by this Court in proceedings for the reorganization of a railroad.

3. Admits that the principal office of The Connecticut Company is in the general headquarters
911 of the New Haven Railroad at 71 Meadow Street, New Haven, Connecticut; that the Comptroller for The Connecticut Company and for the New Haven Railroad is Mr. G. T. Carmichael, and that he is the person with whom by order of this Court claims in these proceedings and in the New Haven proceedings must be filed by the creditors, but denies all other allegations in paragraph 6 of said petition and alleges that the estate of the New Haven now being administered by the aforesaid Trustees includes all the stock of the Debtor
912 herein.

4. Admits that in 1931 (as of July 1) the New Haven surrendered for cancellation to The Connecticut Company $20,123,000 par value capital stock of The Connecticut Company and received in exchange therefor debentures in the principal amount of $20,123,000, but denies all other allegations in paragraph 10 of said petition.

5. Admits that the Debtor is represented in this proceeding by attorneys who are attorneys for the New Haven Railroad and counsel for the New

Haven Trustees; that the President and Comptroller of The Connecticut Company are the same persons who are respectively President and Comptroller of the New Haven, and that Mr. H. S. Palmer is one of said New Haven Trustees, but denies all other allegations in paragraph 11 of said petition. 913

6. Further answering the Debtor says that at the time of the aforesaid recasting of its capital structure in 1931 the New Haven owned all of its capital stock and all of its indebtedness excepting an amount of $18,000 of equipment obligations, $9,000 of which was paid October 1, 1931 and the remaining $9,000 April 1, 1932. 914

Wherefore, the Debtor prays that the petition be denied.

The Connecticut Company,
by
H. J. Wells,
Attorney.

Dated: January 29, 1937.

915

916 ORDER No. 43.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER
917 OF
THE CONNECTICUT COMPANY,
Debtor.

No. 16587

Order Denying Petition of Connecticut Railway and Lighting Company for Appointment of Trustee or Trustees Herein

The petition of Connecticut Railway and Lighting Company praying that a trustee or trustees of the property of the Debtor herein be appointed
918 having come on for hearing duly noticed, and the Court being fully advised in the premises, it IS ORDERED:

That said petition be and it hereby is denied, without prejudice, however, seasonably to renew the same.

ENTER:

C. C. HINCKS,
District Judge.

Dated: Feb. 5, 1937.

In the 919

DISTRICT COURT OF THE UNITED STATES

For the District of Connecticut

In Proceedings for the Reorganization of a Corporation

In the Matter of The Connecticut Company, Debtor.	No. 16587

920

In the

DISTRICT COURT OF THE UNITED STATES

For the District of Connecticut

In Proceedings for the Reorganization of a Railroad

In the Matter of The New York, New Haven and Hartford Railroad Company, Debtor.	No. 16562

921

Report to the Court of Avails from Operation of Property of Connecticut Railway and Lighting Company from October 23, 1935 to November 15, 1936, Inclusive

Now come The New York, New Haven and Hartford Railroad Company, Debtor, The Connecticut Company, Debtor, and Connecticut Rail-

922 way and Lighting Company, and pursuant to orders of this Court (No. 107 in the New Haven proceeding and No. 38 in The Connecticut Company proceeding) entered October 29, 1936, make the following report of avails from operation of property of Connecticut Railway and Lighting Company under the administration of the Court from October 23, 1935 to November 15, 1936, inclusive.

1. The net cash avails from such operation are as follows:

923

October 24, 1935 to October 31, 1935	$11,308.48
November 1, 1935 to December 17, 1935	65,919.52
December 18, 1935 to November 15, 1936	333,227.70
Total	$410,455.70

2. Disbursements during administration from said net cash avails have been as follows:

Advance to Connecticut Railway and Lighting Company pursuant to Order of this Court (Order No. 38 dated October 29, 1936 in The Connecticut Company proceeding),	$125,000.00
Purchase of two H-15-S Metropolitan A. C. F. Motor Coaches Serial Nos. H-15-S-74 and H-15-8-75, Engine #550395 and 550393. (Authorized by Court Order No. 23 dated June 11, 1936 in The Connecticut Company proceeding),	18,005.00

924

Report to the Court of Avails from Operation of Property of Connecticut Railway and Lighting Company from October 23, 1935 to November 15, 1936, Inclusive.

Purchase of one 715 Transit Type Motor Coach, Serial #715349, Engine #125711742. (Order No. 23 *supra*),	4,564.94	925
Cost of transporting above coach from Pontiac, Mich. to New Haven, Conn., (Order No. 23, *supra*),	$70.90	
Notes paid on 46 coaches used in Connecticut Railway and Lighting Company territory. (Authorized by Order No. 1 dated October 31, 1935 and Order No. 20 dated May 18, 1936 in The Connecticut Company proceeding),	169,140.58	926
Interest paid on above notes, (Order No. 1 *supra*),	4,396,77	
Total	$321,178.19	

3. The remaining cash to be accounted for has been determined and agreed to be $89,277.51, which amount is in possession of The Connecticut Company subject to the control of this Court. These figures are subject to minor adjustment for delayed charges and credits which may arise and to adjustment of the casualty and insurance reserve to the actual liability when determined. 927

4. In the determination of the agreed avails there has been charged a ground rental paid by The Connecticut Company to the New Haven Trustees at the rate of $9,186.00 per annum for land at Congress Street, Bridgeport, Con-

928 necticut, upon which is located a carbarn used in the operation of Connecticut Railway and Lighting Company property. The rights to this carbarn property are in dispute and if agreement cannot be reached the issues will be submitted to this Court.

WHEREFORE, said Debtors and said Connecticut Railway and Lighting Company pray that the Court may determine what sum if any, is payable to or by Connecticut Railway and Lighting Company by reason of the operation of its
929 property under the administration of this Court, and may instruct said Debtors concerning the proper disposition of the net remaining avails from such operation.

THE CONNECTICUT COMPANY,
by

H. S. PALMER,
President.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor,
930 by

H. S. PALMER,
President.

(Verification omitted in printing.)

CONNECTICUT RAILWAY AND LIGHTING COMPANY,
by

WM. W. BODINE

(Verification omitted in printing.)

ORDER No. 54 931

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor.	No. 16587

932

ORDER No. 176

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	No. 16562

932

Order on Report Filed Herein May 14, 1937, of Avails from Operation of Connecticut Railway and Lighting Company Property from October 23, 1935 to November 15, 1936, Inclusive

The report of The New York, New Haven and Hartford Railroad Company, Debtor, The Con-

Order on Report Filed Herein May 14, 1937, of Avails from Operation of Connecticut Railway and Lighting Company Property from October 23, 1935 to November 15, 1936, Inclusive.

---

934 necticut Company, Debtor, and Connecticut Railway and Lighting Company of avails from operation of property of Connecticut Railway and Lighting Company under the administration of this Court from October 23, 1935 to November 15, 1936, inclusive, having been duly filed herein May 14, 1937, it is ORDERED:

1. That said report be and it hereby is approved as a stipulation of fact to be considered by the Court in adjudicating the claims of Connecticut Railway and Lighting Company herein.

935

2. That decision upon the prayer appended to said report that the Court determine what sum, if any, is payable to or by Connecticut Railway and Lighting Company by reason of the operation of its property under the administration of this Court be and it hereby is reserved pending hearing on said claims.

3. That until further order The Connecticut Company be and it hereby is instructed to retain
936 possession of the net remaining avails from operation under the administration of this Court of Connecticut Railway and Lighting Company property.

ENTER:

C. C. HINCKS,
District Judge.

Dated: May 21, 1937.

IN THE 937

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor. No. 16582 938

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor. No. 16587 939

Memorandum of Decision on Claims of Connecticut Railway and Lighting Company

The Connecticut Railway and Lighting Company (hereinafter called C. R. & L.) has filed a claim against the respective debtors in each of the above entitled proceedings. To the claim against the estate of The New York, New Haven

940 and Hartford Railroad Company (hereinafter called The New Haven), which is under administration in the court under Sec. 77 of the Bankruptcy Act, the trustees of the estate of that debtor have filed an answer and counterclaim; and to the claim against The Connecticut Company, which is under administration in this court under Sec. 77B, the debtor itself, which has been continued in the possession and management of its estate without the appointment of trustees, has likewise filed an answer and counterclaim. To each of these answers C. R. & L. has filed reply.

941 Although the issues thus raised are not identical, by agreement the claims were presented at a single hearing held jointly in The New Haven and The Connecticut Company proceedings and the two claims can conveniently and properly be considered in this single Memorandum of Decision a duplicate original of which will of course be filed in each of the two proceedings.

The tangled jungle of facts which are now presented to the court as the basis for decisions all traces back to a lease made in 1906 by C. R. & L. to the New Haven. (1) This lease had a

942 term of 999 years and covered all the trolley properties and all of the gas and electric properties of C. R. & L., all of which were located in the State of Connecticut. An outline of the subsequent transactions follows.

In 1910 the New Haven subleased the gas and electric properties to its wholly owned subsidiary, The Housatonic Power Company, and subleased to the Connecticut Company, another wholly owned subsidiary, all of the trolley properties acquired under the original lease. (2) Thereafter the New Haven and the Housatonic Com-

pany its sublessee assigned all said gas and 943
electric properties to the United Electric Light and Water Company a corporation standing wholly outside the New Haven system, and United was formally accepted by C. R. & L. as an assignee, *pro tanto*, under the original lease. Thereafter the United, with the consent of the original lessor, assigned its leasehold covering said gas and electric properties to The Connecticut Light and Power Company the present tenant thereof which was also accepted by C. R. & L. as an assignee.

In 1926, a tripartite agreement was entered 944
into between C. R. & L., The New Haven and The Connecticut Company whereby the New Haven as sublessor, made an assignment to C. R. & L. of future rent as it should accrue from The Connecticut Company, under its sublease.

On October 23, 1935, the New Haven filed its petition for reorganization under Sec. 77 of the Bankruptcy Act. On October 31, 1935, The Connecticut Company filed its petition for reorganization under Sec. 77B. On December 7, 1935, in The Connecticut Company proceedings, the court directed the debtor to reject various executory 945
contracts relating to the C. R. & L. trolley properties including the tripartite agreement of 1926. On December 14, 1935, in The New Haven proceedings, the court entered an order authorizing The New Haven and its trustees to enter into a written agreement with the Connecticut Company to terminate the sublease of 1910 in accordance with its provisions. The agreement was executed and on December 18, in each of the proceedings the parties so reported to the court, as appears on file. On December 18, 1935, the trus-

946 tees of The New Haven also filed a report stating that they had rejected the original lease of 1906 from C. R. & L. On May 1, 1936, the time theretofore limited by the court for the filing of claims in the New Haven proceedings expired. On November 16, 1936, C. R. & L. made reentry upon and repossessed the trolley properties demised by the original lease to the New Haven and by the sublease to The Connecticut Company. Until that time the Connecticut Company had continued to operate said properties as agent for the New Haven.

947 In the foregoing outline, I have stated that in 1910 The New Haven subleased the trolley properties to The Connecticut Company. Such is my considered holding, notwithstanding the contention of C. R. & L. that the instruments of 1910 constituted an assignment *pro tanto* of the trolley properties included in the original lease. The language and substance of the instruments of 1910 are indicative of a sublease rather than an assignment. And if their language be deemed ambiguous, a consideration of these instruments in the light of the surrounding circumstances and the situation in which the parties then found
948 themselves leads to the conclusion stated.

Thus the 1910 contract, in addition to the trolley properties covered by the original lease, includes leases of other properties then held by the New Haven. The contract stated that the New Haven would "demise and sublet" the C. R. & L. properties providing, however, that the Connecticut Company should pay the rental "to the Railroad Company," i. e., to the New Haven. But with respect to the properties not owned by C. R. & L., the same contract stated

that the New Haven would "assign" its lease- 949
hold rights and The Connecticut Company agreed merely "to pay all rental." And in the second instrument between the New Haven and the Connecticut Company executed on the same day, the New Haven "demises and sublets" the trolley properties to the Connecticut Company, covenanting "at all times during the continuance in force of this sub-lease, to pay to C. R. & L., as provided in said lease (i. e., the original lease), the sums therein promised to be paid as rental for the property demised." Thus the 950
parties showed by their very language that they definitely had in mind the distinction between a sublease and an assignment, and intended to accomplish a sublease. And the precision with which this distinction was stated, and with which the tenure of The Connecticut Company was designated as that of a sublessee certainly has significance.

This significance, however, is somewhat weakened by the fact that after the *habendum* in the instrument follow two covenants in which the instrument of transfer is referred to as an 951
"assignment and sublease." But the inclusion of the word "assignment" in this reference may be explained by the fact that by contemporaneous contract the New Haven was in fact assigning to the Connecticut Company properties other than those held on demise from C. R. & L., reserving a lump rental covering both the property subleased and that owned outright by the New Haven.

In any event, the substance of the concluding paragraphs of the instrument (the sublease of 1910) is conclusive. It is there provided that

"all the foregoing provisions of this instrument are subject to the condition that the life of this instrument may at any time be terminated by an agreement in writing of the parties hereto." Obviously, the presence of such a provision demonstrates that no assignment was intended. For the Connecticut Company by an assignment would be put into privity of estate with C. R. & L., the original lessor, thus precluding the possibility of terminating the tenure of the Connecticut Company by the mutual consent of the New Haven and its wholly owned subsidiary.

However, if the language of the instruments could be deemed to create an ambiguity, the court might properly look to the contemporaneous and subsequent conduct of the parties in so far as significant on the question of their intent. Following out this process, it may be observed that the original lease provided that in the event of an assignment, the assignee "shall file with the lessor its agreement to accept the provisions of such conveyance . . . whereupon said assignee shall be entitled to all the benefits conferred and be subject to all obligations imposed upon the lessee under the terms" of the original lease. The original lease, however, contained no such provision with respect to a sublease.

The evidence shows that following the sublease of 1910, The Connecticut Company filed no acceptance with C. R. & L. The failure so to do is clearly indicative of an intent that The Connecticut Company was to become a sublessee rather than an assignee. And the significance of this fact derives added force from other circumstances. Thus the contemporaneous sublease

to the Housatonic Power Company, a subsidiary 955
of the New Haven, contained similar language. The Housatonic Power Company likewise filed no acceptance with the original lessor. But when the Housatonic Power Company in 1911, by concurrent act with the New Haven, transferred the leased gas and electric properties to the United Electric Light and Water Company, which was a corporation standing outside the New Haven system, United forthwith filed its formal acceptance with C. R. & L. The instrument of transfer to the United Electric Light and Water Com- 956
pany, it may be noticed, contained no provision for termination by agreement. (3)

Thus I arrive at my conclusion that by the instruments of 1910 The Connecticut Company became a sublessee of the leased trolley lines and possessed them in that capacity at least until the date of the tripartite agreement of 1926.

By 1926, the situation was as follows: The Connecticut Light and Power Company was in possession as assignee of the demised gas and electric properties and under obligation to pay, not to the New Haven, but directly to C. R. & L. 957
in part, and in part indirectly to the parties entitled thereto under the terms of the original lease, one-fourth of the rent specified in the original lease. The Connecticut Company was obligated as sublessee with respect to the C. R. & L. properties to pay to the New Haven three-fourths of the rental specified in the original lease and in addition as assignee with respect to certain other properties to make payments of rent direct to the New Haven's overlords. The situation was such that if The Connecticut Light and Power Company should make default,

958 the New Haven could save its subsidiary, The Connecticut Company, from a possible forfeiture only by making good the default of the Power Company which was no part of the New Haven system. Moreover, as the 1926 agreement between the parties points out, in the event of a termination of the original lease and reentry by the original lessor, under the terms of the original lease it was open to the original lessor to claim that all properties then in use by the sublessee in connection with the leased property
959 owned by C. R. & L., even though located elsewhere than on the demised premises, should be transferred to C. R. & L. as "additions" without equivalent compensation. The hazard of such a situation obviously was not conducive to the investment of new capital by the New Haven or others in the enterprise of The Connecticut Company.

To meet this situation, by the agreement of 1926 the New Haven "directs The Connecticut Company to pay for and on account of the New Haven" the rental direct to the persons entitled
960 thereto under the original lease", (instead of to the New Haven as provided in the sub-lease of 1910). And C. R. & L. agreed that "on the contingency of the termination of the original lease before the expiration of its term for any cause other than a default by The Connecticut Company, it will treat said Connecticut Company . . . as entitled to the continuance of the leasehold privileges in said demised electric railway properties conveyed to it by said instrument" of sublease "for the balance of the full term named therein and upon the rentals named therein . . . provided that the rentals agreed to be paid"

under said sublease "shall continue to be paid 961
when and as due, such payments to be made and received" directly to the sinking fund created by the original lease and to the original lessor as directed by the New Haven in this agreement.

It will be observed that although the direction as to direct payments of rent was to become effective forthwith, the agreement by C. R. & L. to treat The Connecticut Company as its tenant was to become effective only "on the contingency" of the termination of the original lease. If the Connecticut Company prior to this agreement had by assignment become a tenant of C. 962
R. & L., surely this agreement on the part of C. R. & L. upon a future contingency to treat The Connecticut Company as a tenant was superfluous. The agreement by its very texture thus indicates that the parties considered that at the time of its execution The Connecticut Company was by all concerned deemed to have the status of a sublessee with respect to the demised property. Equally clear is the implication that that status was to continue until the happening of the contingency,—in other words, until the termination of the original lease before the 963
expiration of its term. Since thereafter nothing else transpired to change the relationships and obligations recognized, continued and created by the agreement of 1926, I come to the conclusion that when bankruptcy finally intervened, The Connecticut Company, with respect to all property then in its possession belonging to C. R. & L., stood as a sublessee. That is not to hold, however, that the direction contained in the 1926 agreement for the direct payment of rent created a mere privilege on the part of The Connecticut

964 Company, terminable at will. Prior to this agreement, The Connecticut Company, by the terms of its sublease, had been obligated to pay rent to the New Haven. The rental with which the 1926 agreement was concerned was expressly stated to be the rental provided in the earlier sublease. The direction, therefore, to pay the rental for the account of the New Haven directly to C. R. & L. and to the sinking fund constituted, I hold, an effective assignment of future rents.

The duration of this assignment was not specified in the 1926 agreement. An intent, 965 however, is plainly inferable that the assignment was to continue as long as the relation of sublessor and sublessee continued between the New Haven and The Connecticut Company. The sublease to The Connecticut Company of 1910 provided that the subtenancy should have a life commensurate with that of the original lease. However, this term of the sublease was "subject to the condition that the life of this instrument may at any time be terminated by an agreement in writing of the parties hereto."

966 So far as the record shows, the history of the existing relationships between 1910 and the intervention of bankruptcy discloses no rescission or abrogation of this agreement for termination of the subtenancy by mutual consent. The 1926 agreement does not purport even to qualify the rights of the New Haven and the Connecticut Company to terminate the tenancy of the latter by mutual consent. On the contrary, the 1926 agreement in Sec. 3 provides expressly that nothing therein contained shall "impair the rights of the New Haven Company under . . . Exhibits G and H". And Exhibits G and H

thus referred to comprise the sublease of 1910 967
wherein the right on the part of the New Haven to terminate the sublease by the sole consent of The Connecticut Company is expressly reserved. The assignment of future rents contained in the 1926 agreement was expressly subject to the continuance of the subtenancy of the Connecticut Company.

Holding, therefore, that upon the intervention of bankruptcy The Connecticut Company had status of a sublessee, with the right to terminate the sublease and the assignment of future 968
rents thereunder with the consent only of the sublessor, it becomes necessary to consider the effect of the agreement between the New Haven and The Connecticut Company, entered into after the intervention of bankruptcy by order of the court, whereby the parties purported to terminate the sublease. C. R. & L. seems to contend that this agreement must be treated as inoperative as being in fraud of creditors.

Bearing in mind that the parties to the challenged agreement were the trustees of the New Haven, which is under reorganization in this 969
court under Sec. 77 and The Connecticut Company, which is a wholly owned subsidiary of the New Haven under reorganization in this court under Sec. 77B, the agreement requires close scrutiny from the standpoint of each party.

From the standpoint of the New Haven it is not disputed that the estate when bankruptcy intervened, was obligated by the original lease. It is not disputed,—in any event it is amply demonstrated by the record herein that the original lease was burdensome. As long as the subtenancy of The Connecticut Company existed,

970 the burden of the lease fell primarily on The Connecticut Company. Nevertheless, The Connecticut Company being a wholly owned subsidiary of the New Haven, it was obviously to the interest of the New Haven estate to be relieved from the burden of the lease. The termination of the sublease would operate not to divest the New Haven of any right with respect to the leased assets but rather to work a transfer of the right of possession thereof into the estate of the New Haven. To be sure, the voluntary
971 termination of the sublease would operate to terminate the obligation of The Connecticut Company under the sublease and the 1926 agreement to pay the stipulated rentals. Since however the sublease, like the main lease, was burdensome, if the New Haven Trustees were to hold The Connecticut Company to its obligation with respect to the rental, the effect thereof would be to dissipate the assets of a wholly owned subsidiary. Upon the application of the trustees to the court for authority to terminate the sublease, no creditor, except C. R. & L., opposed.
972 And this absence of opposition may fairly be taken as further indication that it was to the advantage of the New Haven estate that the sublease be terminated. The opposition of C. R. & L. was frankly predicated upon its claim as a creditor of The Connecticut Company, and hence cannot be attributed to any concern of C. R. & L. for the general welfare of the New Haven estate.

From the standpoint of The Connecticut Company the advisability of a voluntary termination was obvious. The sublease had become burdensome. Since its executory liability for the rent

depended upon the continuance of its tenancy, 973
and its tenancy was subject to termination with the consent of the New Haven such a termination was wholly advantageous to the estate of the Connecticut Company.

The position of C. R. & L. in this connection seems predicated upon an underlying belief that a claim of specified amount against the estate of the New Haven has less value than such a claim against the estate of The Connecticut Company. The New Haven trustees seem to share this belief. For their conduct in the administration of the estate and their position 974
with respect to the pending claims discloses a considered effort to divert the incidence of claims from the estate of The Connecticut Company to the estate of the New Haven. For present purposes, therefore, I will join in the assumption that a liquidated claim against The Connecticut Company estate would have a greater value than the same claim against the New Haven estate. Even so, I am unable to perceive that the action of The Connecticut Company, which has been continued in the management of its estate during these pro- 975
ceedings, even savors of fraud against creditors. On the contrary, if the circumstances of its legal situation were such that it could avoid a substantial claim by C. R. & L. or any other party, as a fiduciary under the control of the court it was under affirmative obligation so to do.

The situation may perhaps be most readily apprehended if viewed from a realistic standpoint. When bankruptcy intervened $20,000,000. in debentures were outstanding against the Connecticut Company. Of these, $10,000,000. had been pledged by the New Haven to secure its own

976 obligation. Obviously it is of vital importance to the pledgee that the common claims against the Connecticut Company estate shall be kept to a minimum. If The Connecticut Company, by failure to take advantage of its right of voluntary termination, should permit the security of that pledgee to be diluted unnecessarily by a substantial claim in behalf of C. R. & L., surely it would cause the pledgee irreparable injury. Indeed, one wonders if such a failure might not give rise to a suit for malfeasance against the directors of The Connecticut Company in their
977 individual capacities.

I conclude, therefore, that the agreement between the New Haven and the Connecticut Company for the termination of the subtenancy of the latter was in all respects valid and effective as of December 18, 1935.

At last we have the ground cleared for a consideration of the specific items of claim. I turn first to the

Claim For Damage Resulting From The Rejection Of The Lease Of 1906.

978

From the conclusions expressed above, it follows that this item of claim is provable, if at all, only against the estate of the New Haven. And since the New Haven is in court under Sec. 77 of the Bankruptcy Act, it is necessary to consider the provability of such a claim and the amount for which such a claim, if provable, may be allowed under that statute.

Under the Bankruptcy Act as it existed prior to 1933, a claim for future rent in the absence

of special covenants, as for instance a covenant 979
for indemnity, *Gardiner* v. *Butler & Co.*, 245
U. S. 603, was not provable against the bankrupt's estate. *Manhattan Properties, Inc.* v. *Irving Trust Co.*, 291 U. S. 320. Nor did any claim arise upon the rejection or nonadoption of a lease by the lessee's trustee in bankruptcy. It is now my task to determine whether under Sec. 77 this rule has been abrogated or modified and, if so, to what extent. With respect to the statutory provisions applicable to such a claim, more than a year ago. Mr. Friendly writing for the 980
Columbia Law Review (January 1936), remarked "No reported case has been found in which the courts have been obliged to determine the meaning of this cryptic language." The absence of judicial construction upon the subject matter has continued until the present time.

However, a group of Supreme Court decisions dealing with Sec. 77B have been published which solve some, at least, of the difficulties inherent in the construction of the analogous or contrasted provisions of Sec. 77. Thus, in *City Bank* v. *Irving Trust Co.*, 299 U. S. 433, the 981
court comments upon the provisions of Sec. 77B (b) (10) that "The term 'creditors' shall include for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims of whatever character against the debtor or its property, including claims under executory contracts, whether or not such claims would constitute provable claims under this Act." The court held that by virtue of this provision "claims upon covenants for damages or indemnity arising out of the termination of the lease after initiation of proceedings

982 under 77B are provable." The analogous provision (taken from subdivision (b) Sec. 77) reads as follows:

> "The term 'creditors' shall include, for all purposes of this section all holders of claims of whatever character against the debtor or its property, whether or not such claims would otherwise constitute provable claims under this Act, including the holder of a claim under a contract executory in whole or in part including an unexpired lease."

983 It will be observed that this language is more specific than that contained in Sec. 77B in that it includes within the classification of creditors not only holders of "claims under executory contracts" but also holders "of a claim under a contract executory in whole or in part including an unexpired lease." Thus, clearly under Sec. 77 as well as under Sec. 77B, covenants for damages or indemnity arising out of the termination of a lease after the initiation of proceedings under Sec. 77 are provable, the adjudication acting as a breach of covenant.

984 But here, as in the *City Bank* case, the lease involved contains no express covenant of indemnity and it is necessary to look further into the statute to ascertain the provability of a claim. Under Sec. 77B it was provided:

> "In case an executory contract or unexpired lease of real estate shall be rejected pursuant to direction of the judge given in a proceeding instituted under this section, or shall have been rejected by a trustee or receiver in bankruptcy or receiver in equity, in a proceeding pending prior to the

institution of a proceeding under this section any person injured by such rejection shall, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, be deemed to be a creditor." 985

As to this provision the court held that clearly the purpose was to give a landlord a provable claim for injury due to the rejection of his lease whether the instrument contained a covenant of indemnity or not, and even though the lease be terminated subsequent to its rejection in the bankruptcy proceedings. 986

The same holding is applicable to the corresponding excerpt from Sec. 77, which reads as follows:

"In case an executory contract or unexpired lease of property shall be rejected, or shall not have been adopted by a trustee appointed under this section, or shall have been rejected by a receiver in equity in a proceeding pending prior to the institution of a proceeding under this section, or shall be rejected by any plan, any person injured by such nonadoption or rejection shall for all purposes of this section be deemed to be a creditor of the debtor to the extent of the actual damage or injury determined in accordance with principles obtaining in equity proceedings." 987

I hold, therefore, that such claims are provable under Sec. 77. It is not until we come to the limitations upon the new right created by these acts that any divergence in the Congressional intent is expressed.

988 Section 77B limits the landlord's claim to an amount not exceeding three years' rent. Plainly this is a very different limitation from that contained in 77 whereby the claim is limited "to the extent of the actual damage or injury determined in accordance with principles obtaining in equity proceedings."

Yet, even here, an underlying parallel between the two sections is still observable. For the limitation of Sec. 77, by its very language, is made to modify not the right created or recog-
989 nized by the provision to which it is appended. Definitely it modifies only the remedy; only the damages provable under the right. In *Kuehner* v. *Irving Trust Co.*, 299 U. S. 445, the court commented upon a similar feature of the limitation contained in Sec. 77B.

To be sure, it is urged upon me that under Sec. 77, it was intended that claims based upon a breach of lease should be provable for an amount to include all "future" damages, just as fully as claims for the anticipatory breach of an executory contract had long been provable in bank-
990 ruptcy. *Central Trust Co.* v. *Chicago Auditorium*, 240 U. S. 581. But this contention I must reject.

For the distinction in this respect between leases and contracts had long been recognized by the law. *Chicago Auditorium* case, *supra*. The same distinction had been followed in equity. Thus in *Gardiner* v. *Butler & Company*, 245 U. S. 603, a claim based upon a lease was disallowed, but a claim for future damages growing out of the anticipatory breach of a personal covenant in a lease was allowed. Notwithstanding it was not until 1934, when Sec. 63 of the

Bankruptcy Act was amended, that claims for 991
future rent were allowed to participate in the distribution of bankrupt estates. And by that amendment, the amount for which such claims were provable was limited to one year's rent.

Sec. 77B, as we have seen, limits such claims to three years' rent. In *Kuehner* v. *Irving Trust Co., supra*, the court sustained the reasonableness of that limitation largely upon the ground of the inherent uncertainty in ascertaining future damages. That this uncertainty is not confined to cases in which private corporations are the lessees, is attested by the comment 992
of the court in the Crosstown Company's Appeal in the *Pennsylvania Steel* Case, 198 Fed. 756, which dealt with a lease of railroad property. Obviously the uncertainty increases with the term of the lease. And a perusal of any financial sheet will show that long term leases are found, if anything, more frequently in the capital structure of railroads than of private corporations. Moreover, estimates of rental values in the case of private corporations would ordinarily have to do with commercial property for which 993
there was an unrestricted market. But railroad properties, under The Transportation Act and cognate legislation are not the subject-matter of unrestricted barter and sale. The legislative restrictions upon the salability of such property, as also upon the financing of such transactions, must necessarily serve to augment the uncertainty of estimates or proofs of rental value. Since Congress considered it advisable to impose a limitation upon future damages in proceedings for the reorganization of private corporations, it is wholly reasonable to infer that a limitation

994 was intended in Sec. 77 providing for the reorganization of railroad companies.

Thus contemporary legislation affords powerful support to my conclusion that the clause now under consideration was intended as a limitation, not recognized by the general law relating to damages, upon the amount for which such claims should be allowed.

When we come to measure the intended limitation greater doubt arises. I am unable to accept the suggestion that the limitation of Sec. 63, as
995 amended, shall control. There is utterly nothing in the language of Sec. 77 to warrant such a construction. Indeed, there appears no more reason to construct Sec. 77 as adopting the limitation to one year's rent contained in Sec. 63, than to construe it as adopting the three years' limitation of Sec. 77B. On the contrary, when both in the amendment to Sec. 63 and in Sec. 77B Congress had adopted a limitation measured categorically in terms of the reserved rentals, the very fact that the limitation in Sec. 77 was expressed not at all in terms of rentals, indicates
996 conclusively that a different measure was intended.

But what was that intended measure? In the reference to the "principles obtaining in equity proceedings" I am able to find little clue to the Congressional intent. It is fundamental that questions relating to damages are not peculiarly within the field of equity: when a court of equity is called upon to deal with such questions, it merely follows the law. Moreover, the reference to the principles of equity in this particular connection is especially perplexing in that, in dealing with receiverships, as I have remarked above,

equity had recognized the peculiar quality of 997
covenants of rent under the common law and as a result had consistently declined to entertain claims for future rent resulting from the breach of leases. Thus there is no body of precedents relating to provable damages to which the reference under consideration could possibly apply.

We have, to be sure, in the Crosstown Company's Appeal in the *Pennsylvania Steel* case, *supra*, an instance in which a court of equity treated a lease,—a lease of railroad property,—as an executory contract, because apparently the 998
"lease" comprised a mass of personal property as well as real estate. In that appeal, the court seemed not to question that the "lease", like an ordinary executory contract, was susceptible to an anticipatory breach, and had in fact been so breached. It declined to allow upon the claim for the breach any future damages. But this action resulted not from any rule of law which precluded such an element of damage. The ruling proceeded rather upon the ground that in that case such damages had not been proved with the requisite certainty, the court observing 999
that upon the peculiar facts of that case it could conceive no method whereby such damages could be sufficiently proved. But from *Gardiner* v. *Butler*, *supra*, and its companion case, *William Filene's Sons Co.* v. *Weed*, 245 U. S. 597, it is abundantly clear that such damages, when proved with sufficient certainty, must be allowed.

In short, in the cases of equity receiverships I am unable to find any principle relating to the allowance of damage to which this statutory reference could possibly apply.

1000 Thus, as it were, by process of elimination we turn to that portion of the limitation which provides that the claim shall be recognized to the extent of "the *actual* damage or injury." The 1935 amendment to Sec. 77 originated in bill H. R. 6249. The definition of "creditors" contained in H. R. 6249 was included without change in the enactment of the amendment to Sec. 77. But H. R. 6249 in its original form provided that in case an executory contract or unexpired lease were rejected, "any person injured by such nonadoption or rejection shall, 1001 for all purposes of this section, be deemed to be a creditor to the extent of such damage or injury" without further limitation. *Such* damage obviously meant *all* damage resulting from the rejection or nonadoption. Thus the original text of the bill was admirably worded to accomplish the allowance of future damages.

But instead of adopting the language of the original bill, Congress as we have seen imposed a limitation upon the damages. It provided that only *actual* damages should be allowed. In so 1002 doing, Congress may well have had in mind that passage of the opinion in the Crosstown Company's Appeal in the *Pennsylvania Steel* case, 198 Fed. at page 759, wherein "future damages" were stigmatized as conjectural, foreshadowing the recent strictures on the subject in *Kuehner* v. *Irving Trust Co.*, 299 U. S. at page 454.

Nevertheless, it will not do to construe *actual* to mean merely *non-speculative*. So construed, the addition to the original text of H. R. 6249 would carry no additional meaning. For neither equity nor the law have viewed *future* damages,

such as are ordinarily assessed by way of com- 1003
pensation for the anticipatory breach of contract, as being essentially speculative. Nevertheless, the court suggested in the *Kuehner* case, supra, (page 454) that an award based on estimates or findings involving rental values for the remainder of the term sufficiently smacks of speculation to justify the imposition of a legislative limitation for purposes of Sec. 77B. Essentially, the suggestion is that for purposes of Sec. 77B Congress authorized the allowance of damages smacking of speculation, although 1004
not technically speculative) but minimized the speculative element by the imposition of a categorical limitation.

Adapting this thought to the variance in the language used in Sec. 77, it is reasonable to infer that Congress sought not merely to restrict but wholly to eliminate this speculative element by confining such controversies to a consideration of the past which is *actual*, to the exclusion of the future which in a sense is speculative. The fact that long term leases, such as that here involved, not uncommonly are found in the capital 1005
structure of railroad companies, adds to the reasonableness of this conclusion. Surely it is not strange that Congress should seek to limit a controversy which otherwise would include in its scope half the Christian era.

And so, in the absence of other clues to the legislative intent, I am impelled to construe the limitation of *actual damage* as meaning *accrued* damage or injury, to the exclusion of all "future" damages not yet accrued.

However, it does not follow from this holding that landlords were to be left in the plight in

1006 which they found themselves under the Bankruptcy Act prior to the amendments beginning in 1933. In the *Pennsylvania Steel* case, the rule was announced that claims which, when presented within the time limited by the court for their presentation, are certain or are capable of being made certain, should be allowed. But the opinion (page 741) also cites without disapproval *New York Security & Trust Co.* v. *Lombard Ind. Co.*, 73 Fed. 537, wherein claims were held allowable if "sufficiently matured before any order of distribution is made." And
1007 Justice Holmes, in the case of *Filene's Sons Co.* v. *Weed, supra*, stated that a court might not properly exclude creditors from participation in an estate in an equity receivership on any "lawful claim that matures within a reasonable time before distribution can be made." In the *Pennsylvania Steel* case it was suggested that the limitation of the time for filing claims might not properly be used to defeat a claim arising upon the rejection of contract or lease occurring *after* the time limited had expired. It is fully apparent
1008 that equity, when unrestricted by a rigid statute, will adapt its processes in so far as possible as the needs of justice shall require.

So here, while I feel constrained to hold that by statute I am precluded from allowing "future" damages, I still feel free, indeed impelled, so to direct these proceedings that the rigid limitation of the statute, while serving its purpose, may yet interfere as little as possible with substantial justice. I thus propose to allow all damage which has been proved up to the date of hearing upon this claim, viz., June 30, 1937, irrespective of whether it occurred before

or after the expiration of the time limited for 1009
the presentation of claims, viz., May 1, 1936.

For Sec. 77, as I view it, has swept away all the technicalities of the common law with respect to the anticipatory breach of leases and of covenants for rent. It has created a new right. And if, as I hold, the remedy flowing from that right has been rigidly restricted to preclude the court from computing or estimating future damages, the court should adjust its processes so as to consider the merit of all claim of damage not falling within the statutory bar. 1010

In this connection, comment is required upon the provisions of Sec. 77 authorizing the rejection of leases in a *plan*, as well as by the trustees acting under the direction of the court. Whether a rejection in a plan is effective before confirmation of the plan or without other approval of the court, it is not necessary to decide. The provision is important for present purposes only in that it imports the possibility that a lease may be rejected long after the expiration of the time limited by the court for rejections by the trustees, and possibly long after claims of other les- 1011
sors growing out of earlier rejections have been heard. Clearly a lessor injured by a rejection in a plan would be entitled to file a claim and be heard thereon. Under the rule announced above, his damages would be allowable up to the date of the hearing. He would thus enjoy a measure of damage, identical in principle but substantially more generous in extent, than that available to other lessors whose claims had been earlier liquidated. Since equity is equality, such a situation would necessarily entail further remedial action.

1012 To meet such a situation and equally to afford a full measure of justice to all injured lessors alike, I hold that the following outline of procedure is required as contemplated by the Act. Lessors claiming injury from the rejection or nonadoption of leases shall file their claims within the time generally limited for the presentation of claims. If the rejection or nonadoption is perfected after the time limited has expired, they shall file within a reasonable time thereafter, to be fixed specially by the court. All such claims thus filed shall be pressed for hearing as expe-
1013 ditiously as possible and damages accruing to the date of hearing shall be liquidated. But such claimants may reserve the right to apply for a later supplemental hearing to liquidate any damage which may have accrued in the interim.

Such procedure, it may be argued, will involve administrative difficulty in that it will leave a part of the claimed damage unliquidated while the formulation of plans and possibly hearings thereon by the Interstate Commerce Commission are in process. A short answer to such an ob-
1014 jection is to say that the text of Sec. 77 seems not to disclose that ease of administration was a chief legislative objective. A more satisfactory answer, I believe, is a general denial.

For generally, a plan workable in other respects will be sufficiently flexible in its provisions for common creditors to accommodate a considerable range in the aggregate of the allowed claims. Indeed, in the New Haven proceedings, the Commission has already held a preliminary hearing upon the plan and further hearings are scheduled to proceed within a month or so. But none of the principal lease claims have yet been

liquidated. Indeed the time within which trustees may reject leases has not yet expired. Notwithstanding, I have heard no complaints that the hearings on the plan will be thereby embarrassed or delayed. 1015

In the course of its task to formulate a plan, the debtor found it necessary to petition for several extensions of the time limited therefor, reciting at considerable length the underlying reasons for the delay. Among these reasons, no mention was made of the fact that the lease claims were unliquidated.

Moreover, upon the original hearing of a lease claim, generally all the principles involved will be settled. That done, the rate at which damages will accrue up to the final hearing on the claim can be forecast at least with moderate accuracy, thus in the usual case permitting of estimates of the final aggregate sufficiently definite for determining the fairness and feasibility of a plan. If, as it were, at any hole a "stymie" should occur, the parties need but call the situation to the attention of the court. Thus, if, for instance, the Commission should certify to the court that in order to ascertain the equity of the common stock it was necessary that lease claims participating under a plan in some prior issue of stock should be finally liquidated, I cannot doubt the power of the court promptly to assign all such claims for final hearing. For the remedies of creditors must yield to the actual necessities of reorganization which was the cardinal legislative objective. 1016 1017

Nor can I agree that the procedure outlined above will add to the aggregate burden on the court or on claimants. For generally, when it comes to a hearing, the allowability of future

1018 damages necessitates a formidable record and the elimination of this element will vastly simplify proceedings on the original hearing. And the final hearing, as I envisage it, will generally require, in the case of a lessor who has repossessed, merely the proof of its net earnings from the repossessed property to date of hearing, for deduction from the rent originally reserved.

In many cases, to be sure, an expedition of reorganization will require that decisions upon the original hearing of a lease claim shall be appealable. But since generally all disputed 1019 principles will be raised on the original hearing, the reservation of the right to a supplemental hearing will scarcely tend to a multiplicity of appeals.

I can only conclude that the procedure outlined accords not only with the needs of justice but to the convenience of administration as well. It accords with the statutory injunction in that it makes free use of "the principles obtaining in equity proceedings."

I see no need now to fix the time for final 1020 hearings on lease claims. If the proceedings take such shape that final liquidation is imperatively required before a plan is certified to the court for confirmation, doubtless the situation will seasonably be brought to my attention.

Proceeding now to apply the foregoing principles, I find that the stipulated rent for the trolley properties for the year 1935 amounted to $1,049,563.50. There is no dispute as to this basic figure.

On this bases, (since I find nothing to indicate a change in the stipulated rent for the ensuing period), I compute the accrual of rent from

December 18, 1935, when the subtenancy of the Connecticut Company was terminated and the original lease was rejected by the New Haven trustees, to June 30, 1937, when the hearing upon these claims began, at $1,609,330.70. 1021

From this figure must be deducted the net earnings of the demised and repossessed trolley properties. The record shows that during the year November 1, 1935 to October 31, 1936 (when the properties were being operated by the Connecticut Company) the net income thereon was $183,911.34, after depreciation accruals of $179,089.59 and tax accruals in the aggregate amount of $147,981.92. (4) 1022

However, the figure of $183,911.34 may not properly be used as a base because it reflects a deduction of $179,089.59 as a depreciation accrual and this was the depreciation accrual for *all* of the property operated by the Connecticut, —not for that portion thereof which belonged to and was repossessed by C. R. & L. The burden of proof being upon the claimant, it was incumbent on the claimant to show a proper depreciation accrual for the *repossessed* property. Not having done so, it is not entitled to the credit of a deduction on account of depreciation. 1023

Similarly, it has not been shown that the accrual of taxes which concededly was $147,981.92 as against the Connecticut Company was computed only upon the base which under the lease measured the lessee's obligation with respect to taxes.

It follows that to obtain a base for present purposes, the net income must be increased by $179,089.59 and by $147,981.92. This gives us

1024 as net income for that year a figure of $510,982.85. Using this figure as the base, I compute the net income for the period from December 18, 1935 to June 30, 1937 at $787,765.22. The difference between this figure and that of $1,609,330.70, representing rental accruals for the same period, amounts to $821,565.48 which will indicate the damage to the claimant, subject to one further adjustment.

Because of the burden imposed by the lease upon the lessee with respect to taxes, C. R. & L. claims further damage from the rejection of the
1025 lease in the amount of $107,111.49 annually. Of this amount $100,593.37 is claimed to represent the lessor's obligation with respect to federal income taxes.

Even if it be true that this figure approximates the debtor's *obligation* with respect to the federal income tax, that fact has no bearing upon the claimant's *damage*. For the claimant's income tax is assessed upon rentals actually paid, not upon the breached obligation to pay. By the breach the claimant's liability for income tax
1026 necessarily shifted from a rentals basis to an earnings basis. That being so, the claimant could not be damaged by the debtor's failure to settle a tax liability which had terminated. If anyone was "damaged", it was the government. And so, at most, the only damage to the claimant with respect to the breach of the obligation to pay its federal income tax must be measured by the tax assessable upon so much of its earnings as is derived from the repossessed property. I find no evidence in the record of this item.

I do find, however, sufficient evidence to support a claim of damage with respect to local

real estate taxes, taxes on bond interest payable 1027
at the source, and federal capital stock tax. These items aggregate $6,518.12, annually.

Also the record shows the annual cost of fire insurance upon the demised property to be $2,831.15. (Stipulation Par. (7).) This item, in addition to the rent, the New Haven was obligated to pay. Adding this amount to the annual proved tax accruals (as just stated) I find that $9,349.27 represents the aggregate allowable accruals above the rent. This figure, because of the recurrent quality of its components, may fairly be taken as a base for the period in question. Upon this 1028
base I compute the resulting damage for the period on account of these components, at $14,413.45.

Adding this amount to $821,565.48, arrived at as above, I find that $835,978.93 represents the damage to the claimant resulting from the rejection of the lease, accrued up to June 30, 1937. (5) This item of claim may be allowed as a common claim in that amount, but only against the estate of the New Haven. This item of claim against the estate of the Connecticut Company is wholly disallowed.

1029

ACCRUED RENT

On October 31, 1935, when the petition of The Connecticut Company for reorganization was filed, both estates were each under obligation to pay three-fourths of the rental stipulated in the lease of 1906. Following the stipulation of the parties, I find that such rental was then accrued and unpaid in the amount of $304,472.13. This amount, therefore, is allowed as a common claim against each estate.

1030 Accrued Taxes.

The lease of 1906 obligated the lessee to pay "from time to time during the continuance of this lease all taxes . . . . which may be lawfully imposed or assessed in any way upon the lessor or lessee with reference to the demised property, the capital stock of the lessor, its indebtedness, contracts, rights, privileges, franchises and revenues, or said reserve rental . . . . said payments to be made to the authority or treasurer entitled by law to receive the same,
1031 whether federal, state or municipal." This covenant was assumed by The Connecticut Company in the sublease of 1910 (subject to the termination of the sublease) and by the 1926 agreement The Connecticut Company came under a direct contractual obligation to C. R. & L. to make said payments as long as it should remain a subtenant. The claim is, therefore, allowed against each estate to the extent of such taxes as have been proved to have become payable prior to December 18, 1935, when the termination of
1032 the sub-lease to The Connecticut Company became effective, and which were not in fact paid by The Connecticut Company or for its benefit by The New Haven.

I find from Exhibit 4 an obligation with respect to the fourth installment of the federal income tax payable by C. R. & L. for the calendar year 1934 due December 15, 1935, amounting to $24,739.14. Likewise an obligation with respect to federal income tax payable at the source accrued on October 31, 1935, amounting to $3,057.75. Also a further obligation with respect to an additional assessment of federal in-

come tax for the year 1934, with interest in the 1033
amount of $61.86. The foregoing items aggregate $27,858.75, and the claim for these items is allowed in that amount as a common claim.

ARCH STREET ABANDONMENT

The evidence that this New Britain trolley line, .8 of a mile long, was abandoned without the consent in writing of the lessor's directors is not highly convicing. The fact that over twenty other abandonments were subsequently authorized in writing as requested; coupled with 1034
the fact that the lessor apparently acquiesced in the Arch Street abandonment, which occurred in 1921, until the filing of its claim herein is indicative of a waiver of the requirement of the lease for a *written* consent, or of laches.

However, let it be assumed for present purposes that a breach of covenant has been proved. I still must hold that no legal damage has been proved for the breach. The Public Utilities Commission of Connecticut had authorized the abandonment upon a finding "that the records 1035
of the Trolley Company (i. e., The Connecticut Company), show that this line has never been a paying one, either with or without jitney competition and . . . that probably this short line of street railway should never have been constructed, and certainly can never be made to pay under a flat fare system of ten cents, even with a transfer." Thereupon the Commission issued to another a certificate to operate a bus route on Arch Street. In 1936 the bus operator, covering a route 1.4 miles long including the old Arch Street line of .8 mile, operated 122,216 bus miles

1036 deriving a gross revenue of $31,052. The claimant offered as a witness a "management" expert who testified to a computation whereby the operating costs of The Connecticut Company in the New Britain area were applied to the 1936 gross revenues of this particular operator on an "incremental" basis, that is to say upon the assumption that the costs of operating the three necessary additional busses for Arch Street would be favorably affected by the fact that The Connecticut Company was in 1936 established in bus operations in this area. On this basis it was
1037 computed that operation of the line by The Connecticut Company would have yielded in 1936 a net profit of $10,179., which capitalized at 6% would amount to $169,582., which is the amount claimed.

However, the evidence discloses that in 1921 when the abandonment took place, the Connecticut Company operated *no* busses in the New Britain area. That being so, there would seem to be a complete absence of justification for computations based upon an "incremental" basis.
1038 However that may be, there are grounds more fundamental requiring the disallowance of this claim.

For the claim is predicated solely upon a claimed breach of the covenant not to abandon without written consent. This obligation, if it attached at all, was fastened upon The Connecticut Company by its assumptions in the sublease of 1910. There is utterly no evidence in the record to show that in 1910 The Connecticut Company could or should have foreseen that the consequence of abandoning an unprofitable trolley line would be the loss, capitalized or other-

wise, of future profits to be derived from the 1039
operation of a bus line comprising in part the unprofitable trolley route, or that such a loss would follow the claimed breach in the usual course of events. *Williston on Contracts* (Revised Ed. of 1937) Vol. V, Secs. 1344, 1345, 1355. Indeed, the claimant can scarcely be deemed to have proved such a consequential loss in the absence of some credible evidence that The Connecticut Company might have obtained from the Public Utilities Commission the necessary certificate of authorization to substitute a bus route 1040
for the unprofitable trolley line.

This item of claim is disallowed as a claim against either estate.

Deficiencies In Property Returned To C. R. & L.

This element of claim in so far as it is pressed against the estate of The Connecticut Company must be disallowed. For the claimed breach of covenant upon which it is based did not occur until the termination of the original lease. Prior 1041
thereto, if the conclusions expressed above are sound, all executory obligations of the Connecticut Company with respect to the demised property had been terminated with its subtenancy.

Considering then this claim as directed against the estate of the New Haven, we must look to the original lease for a statement of the New Haven's obligations.

We there find that with respect to maintenance, the New Haven covenanted "to maintain said demised premises and property . . . in as good order, repair and condition as the same are

1042 now, and in their present state of efficiency." (Exhibit A, page 16.) This covenant, it will be observed, deals with maintenance and fixes as a standard the degree or quality of maintenance as it existed in 1906.

Then it was further covenanted that the New Haven at its own expense would "in good faith and to the best of its ability operate" the demised property and that it would "furnish all apparatus, equipment and plant in substitution for and in addition to that hereby demised which may be necessary or proper for such opera-
1043 tion." This covenant, it will be observed, deals not with *quality* but rather with *quantity*, and fixes as the standard for replacements and additions the requirement that they shall be sufficient for operation by the lessee "in good faith and to the best of its ability."

Then with respect to restoration, upon the expiration of the lease, the New Haven covenanted to return the demised property with all replacements and additions "in such condition and with such equipment, materials and appurtenances
1044 as to fully fit it for the immediate use of the lessor in the same manner as at present."

The parties are in conflict as to the measure of obligation created by these covenants. I think counsel on both sides overlook the fact that the first covenant above quoted has to do with maintenance of the second covenant with replacements and additions. In any event, it is clear that the covenant with respect to *restoration* must be read together with both of the earlier covenants on maintenance and replacements.

Thus read, I construe it to create an obligation 1045
to return the property demised, together with such replacements and additions as would have been required by considerations of operation "in good faith," with the items remaining of those originally demised "in as good order" as in 1906 when received with the replacements in as good condition as the items thereby replaced when originally demised, and with the additions in as good order as the condition in 1906 of similar items of property.

The claimant, in part at least, seems to 1046
acquiesce in this construction. For it conceded an absence of obligation to return new property for old. More specifically, it conceded that the covenants would be satisfied by returning property which had been 50% depreciated. But this 50% depreciation standard is merely one arbitrarily adopted by the claimant for convenience. It has no basis resting on the intent of the parties as expressed in the lease. I must, therefore, reject this standard and hold that with respect to the property actually returned, no breach of the covenants can be shown without 1047
evidence of the condition of the property in 1906.

The claimant has furnished no such evidence. The debtor, on the other hand, offered highly convincing evidence that the demised property when received by the Lessee in 1906 was generally in a seriously run-down condition. From such a record, I cannot find any breach of the covenant of maintenance, nor can I predicate a breach of the covenant of restoration upon the depreciated condition of the property restored.

1048 So much of the claim as is predicated upon a failure to make and return necessary additions to the demised premises must also be disallowed. For as I have construed the covenants, the obligation of the New Haven with respect to a return of the property is made to depend in part upon its obligation to make replacements and additions, which in turn is made to turn upon "good faith" in operation as the standard.

The claimant has offered a large volume of evidence tending to show deficiencies in the property judged from the standpoint of efficient operation. Bearing in mind the fact that doubtless every operator (and especially one in the throes of proving damages) has a tendency to feel that additional equipment of some sort would add to the efficiency of his operations, this evidence, though indeed substantial, may require some seasoning.

1049

However that may be, the claimant's evidence falls far short of proving bad faith. Indeed, it being to the advantage of the debtors to operate The Connecticut Company as efficiently as possible, the inference that the operating company was starved because of ulterior designs against the lessor, may not lightly be indulged. The debtors offered testimony to the effect that it had been their invariable policy to treat the leased property as they treated their other properties. There was no convincing evidence looking the other way. The items of claim which the parties have discussed under this heading must be wholly disallowed.

1050

However, there is one item which the parties have discussed in connection with the claim of C. R. & L. against the estate in administration

which I believe is provable under this heading. 1051
For in connection with that claim it was shown that pursuant to Order No. 20, entered May 18, 1936, in the Connecticut Company proceedings, that debtor then paid an aggregate of $173,537.35 representing principal and interest due on conditional bills of sale covering 46 busses which in the following November were turned over to C. R. & L. as a part of the demised property.

These payments represented a capital expense which The Connecticut Company was obligated to incur under its assumption (subject always to 1052
the termination of its tenancy) of the lessee's covenant in the original lease "at its own risk and expense" to furnish all equipment necessary for the proper operation of the leased lines. This obligation was not fully satisfied by the acquisition of *incumbered* property. Nor would the obligation of the New Haven under the restoration covenant be fully satisfied by a return of incumbered property.

The debtors are precluded from asserting that these 46 busses were not required for the proper operation of the leased property. For by turning 1053
them over to C. R. & L. they definitely indicated that they had become part of the corpus of the leased property.

When I come to the claim of C. R. & L. against the estate in administration, I propose for reasons which I shall then indicate to allow this item as an offset to that claim. The result of that ruling will be to produce a situation the effect of which would be as though these 46 busses were returned to C. R. & L. subject to the incumbrance of these conditional bills of sale. That being

1054 so the item is provable as a "deficiency" and is allowed as a common claim against each estate in the amount stated, viz. $173,537.35.

RECLAMATION CLAIM

C. R. & L. prays for a judicial determination of its right to own and operate a proper share of five disputed bus lines together with the transfer of four busses for the service of the same and an accounting of the net operating revenues derived therefrom since November 16, 1936.

1055 The claim is predicated upon a paragraph of the original lease, as follows:

> "And the Lessee further covenants that at its own first cost and expense it will enlarge and extend said property within the territorial limits of the towns where said property is now located, and that it will acquire, so far as practicable, necessary franchises, rights and powers in the name of the Lessor, for the purpose of enabling the Lessee to enlarge and extend, as aforesaid, and to carry
> 1056 on, preserve and develop the business, in such manner as shall at all times to the Lessee, acting in good faith, seem adapted to develop and safeguard the property, to promote and preserve its interests, and to extend its franchises and powers within said territorial limits."

These routes are shown on Exhibits 36, 37 and 39.

It is clear enough that the obligation to make enlargements and extensions, imposed upon the lessee by this covenant, is confined to "the territorial limits of the towns where said property

is now located." However, it has been shown that 1057
in 1906 there were at least four towns, viz., Orange, Milford, Southington and Newington, in which were located not only a part of the demised premises but also other properties then owned by the New Haven. And the lease itself shows numerous other towns in which the demised property was located. In so far as the controverted routes constitute extensions located in these towns, the lease contains no specific language to indicate whether such extensions must be deemed to be a part of the demised properties 1058
or whether they may equally be deemed to be a part of the owned properties.

However, the lease does state that the obligation of the lessee with respect to extensions is to be measured by its good faith. Indeed, such a qualification would necessarily be implied even in the absence of express language. Bearing in mind that for the duration of this l ase it was contemplated that the lessee alone should have liberty of action with respect to extensions, it fairly follows that when a given extension, made within the territorial limits of any town in which 1059
the demised property was located, was equally advantageous to the leased lines and the owned lines, the situation of the lessee was so closely akin to that of a fiduciary that it was precluded from absorbing the extension for its own benefit. The lessee, in making this covenant, voluntarily put itself in a position where it would be subject to conflicting interests over a long period of years. It neglected to insist upon a provision in the lease whereby the ownership of extensions might be settled when the extensions were made. As the extensions were made, notwithstanding

1060 its position as a quasi-fiduciary, it did nothing to bring its claim of ownership to the attention of the lessor. Under such circumstances it cannot in good conscience be allowed to absorb an advantage to which the lessor had an equal right.

In considering the individual routes in question, I shall use the reference numerals employed by the claimant in its brief and exhibits. Thus, Exhibit 36 shows that route 1 runs from a junction point with another C. R. & L. route on the south, northeasterly through the towns of Milford and
1061 Orange. Thence through West Haven into New Haven. Since the original lease contained property located in the territorial limits of Orange and Milford, I hold that so much of this route as lies within those towns is allocable to C. R. & L.

Exhibit 37 shows route No. 2 running from a junction point on another C. R. & L. route in the town of New Britain, northeasterly across the corner of Newington. Thence through West Hartford into the town of Hartford. Since the original lease included a demise of property located in New Britain and Newington, I hold
1062 that so much of this route as lies within those towns is properly allocable to C. R. & L.

Route No. 3, shown on the same exhibit, lies wholly within the town of New Britain and hence is allocable to C. R. & L.

Route No. 5, shown on Exhibit No. 39, appears to lie wholly in the town of Darien, running westerly from a junction point with another C. R. & L. line, and hence is allocable to C. R. & L.

What the claimant designates as route No. 6, however, shown on the same exhibit, is merely the eastern extremity of a route, the body of which is in Stamford. As such it constitutes no

"enlargement" or "extension" of any portion 1063
of the leased property. It has no junction point with any other C. R. & L. route. This route, therefore, I hold not to be allocable to C. R. & L.

So much of these routes as I have held to be allocable to C. R. & L., subject, of course, to the jurisdiction of the Public Utilities Commission it is entitled to repossess and operate. It is entitled further to the busses necessary for such service, and to an accounting of the net revenues since November 16, 1936.

1064

CLAIM AGAINST THE CONNECTICUT COMPANY FOR REJECTION OF CONTRACT TO BECOME A TENANT

This claim appears to be wholly predicated upon the 1926 agreement wherein it was provided that upon the termination of the original lease, prior to the expiration of its term, C. R. & L. would "treat said The Connecticut Company . . . as entitled to the continuance of the leasehold privileges in said demised electric railway properties conveyed to it by" the sublease of 1910 "for the balance of the full term 1065
named therein . . . ; provided that the rentals agreed to be paid under said" sublease "shall continue to be paid when and as due," such payments, however, to be made directly to the parties entitled thereto instead of as specified in the sublease. By this same agreement, it will be recalled, The Connecticut Company accepted the direction of the New Haven, beginning forthwith to pay the greater part of the rentals direct to C. R. & L.

I am unable to find anything in these provisions which, upon the termination of the origi-

1066 nal lease before the expiration of its term, imposes any obligation upon The Connecticut Company to become a tenant of the original lessee. To be sure, in consideration for the privilege of receiving the greater part of the rentals direct, C. R. & L. obligated itself upon such a contingency to accept The Connecticut Company as its tenant *provided* the "rentals . . . shall continue to be paid when and as due." This language wholly fails to disclose any *obligation* on the part of The Connecticut Company to become a tenant.

1067 The 1926 agreement in this respect is very different from the agreement involved in the case of *In re Cigar Stores Co.*, 89 Fed. (2nd) 3, upon which claimant relies. The agreement there under consideration contained language whereby the subtenant in the event of a termination of the head lease prior to the expiration of its term "agrees . . . to become the tenant of the owner and pay the rent to the owner, and agrees with the owner to keep and perform the terms, covenants and conditions of said sublease 1068 as to rental and tax payments," as well as of the head lease. Upon this unequivocal undertaking of the subtenant, turns the decision of the court in that case. Such a provision is wholly absent in the 1926 agreement.

This claim is disallowed.

Claim Against The Estate Of The Connecticut Company In Administration

This portion of the pending claim is based upon the right of C. R. & L., as a lessor, to compensation out of the estate as an expense of ad-

ministration for the reasonable value of the use 1069
of its property during the period of administration under the court. C. R. & L. contends that the measure of such compensation is, *prima facie*, the rent reserved in the lease, citing *In re United Cigar Stores*, 89 Fed. (2nd) 3, 6; *In re Case Commissary Corp.*, 11 Fed. Supp. 288; and *In re Millard's Inc.*, 41 Fed. (2nd) 498. All of these are cases involving private, commercial corporations in bankruptcy.

The debtors, however, contend that in the case of a public utility, since the continuous operation 1070
of the estate is required in the public interest, the true measure of compensation is at most the net earnings of the property under administration, citing *Penn. Steel Co.* v. *N. Y. City Ry.*, 198 Fed. 721, 729, 730; 216 Fed. 458, 463; *U. S. Trust* v. *Wabash Railway*, 150 U. S. 287, 299; *American Brake Shoe and Foundry Co.* v. *N. Y. Rys.*, 282 Fed 523, 528; and *Westinghouse* v. *Brooklyn Rapid Transit*, 6 Fed. (2nd) 547, 549.

The cases cited by the debtors amply sustain their contention. I hold, therefore, that here the net earnings must measure the base of the 1071
claimant's compensation.

To be sure, the same cases indicate that if a receiver, after rejecting a lease, is allowed to retain the leased property after the lessor is ready to receive and operate the same and after his demand for repossession, the estate may be liable for the reserved rent, even though it exceeds the net earnings. But this doctrine can have no application here, although on other grounds a liability for the reserved rent for a part of the period may be founded upon the peculiar facts of this case.

1072 Upon the rejection of the lease, necessarily it required considerable time for the lessor to transform itself from a corporate shell into an operating company. That the delay in repossession was due to this case, and not to the refusal wrongful or otherwise of either debtor, is clearly indicated by the minutes of a hearing held in the Connecticut Company matter on October 2, 1936. (Printed record of Connecticut Company proceedings, page 285, et seq.) Thus, for aught that appears, C. R. & L. actually repossessed the leased property just as soon as it was in a posi-
1078 tion to operate the same. Pending that time, under the doctrine of the cases cited above, it was the duty of the court to cause the properties to be operated in the service of the public. This obligation has been recognized and somewhat enlarged by Sec. 77 (c) (6) of the Bankruptcy Act.

To the period from October 31, 1935, when its petition was filed, to December 18, 1935, when the Connecticut Company terminated its sublease with the consent of the New Haven estate, the peculiar facts of this case preclude an applica-
1074 tion of the foregoing principles. During this period The Connecticut Company was in full possession of the leased property in its own right as subtenant of The New Haven. The termination of the subtenancy and the simultaneous rejection of the original lease by the New Haven trustees cannot operate to relieve the estate of The Connecticut Company from an obligation already matured. It is in no position to claim that it used this period as a breathing-spell within which to decide whether it should reject its sublease from the New Haven or its contractual obligation to pay rent to C. R. & L. dur-

ing its subtenancy. For it never accomplished 1075
either a rejection or an adoption of these obligations. It follows that the stipulated rent for this period is recoverable as an expense of administration from the Connecticut Company. And this recovery, it must be noted, will serve to exonerate the estate of the New Haven and the trustees of that estate from the contemporaneous liability for rent or for the use and occupation of the premises for that period.

The payment due for that period I compute from the underlying data as follows. The stipulated rent for 1935 amounted to $1,049,563.09. 1076
By prorating this to cover the period from November 1, 1935 to December 18, 1935, I find the accrual of rent for that period to amount to $138,024.73.

In addition, the claimant is entitled to reimbursement for the proved accrual of taxes and fire insurance within this period. Using the same base for the computation of this item as was used in computing as above the damages resulting from the rejection, I prorate the sum of $9,349.27 (representing the proved accrual for 1077
one year) and arrive at an accrual for this period of $1,168.65. The addition of this amount to the rental accrual results in a sum of $139,193.38 which is recoverable for the period from November 1, 1935 to December 18, 1935.

From December 18, 1935, until repossession of the leased premises by C. R. & L. on November 16, 1936, the Connecticut Company remained in possession, not in its own right, however, but only as agent of the New Have. trustees for the operation of the properties pend. their repossession. For this period, the prin. ples stated

above indicate that C. R. & L. was entitled to the net earnings of the leased property amounting to $333,227.70. (Record Connecticut Company proceedings, page 504.)

Adding together the amounts respectively recoverable for the two component parts of the interim period of operation, I find the sum of $472,421.08 to constitute the measure of the claim.

But the claim as above stated is subject to credits. $125,000 in cash has heretofore been advanced to the claimant, and $22,640 has been paid for busses bought at its request. These credits are conceded.

The Connecticut Company claims a further credit of $173,537.35 representing the payments, discussed above under the heading of claimed deficiencies, made in discharge of its obligation under conditional bills of sale covering 46 busses. This item of credit is disputed.

When these payments were made in May, 1936, C. R. & L. had as I have ruled above a valid claim on this account. But this claim was a common claim against each estate. Its position was not such that it could enforce the claim as an operating expense against either estate in administration. Such being the situation of the parties, the payment may not properly be treated as the settlement of a common claim for cash at its full face value. Rather it was an advance made against the claim against the estate in administration and intended to leave the claimant just where it stood with respect to its claim against either estate. This intended result will be accomplished by ruling as I have that the item represents a common claim for a deficiency in the restored property and by allowing it, as I

do, as a credit upon the claim against the estate 1081
in administration.

The credits thus allowed aggregate $321,177.35. Deducting this figure from $472,421.08, I find the claim against the estate in administration to amount to $151,243.73. It is allowed in that amount as an operating expense of the estate of the Connecticut Company in administration. The claim was not pressed against the New Haven trustees doubtless in confidence that The Connecticut Company estate was ample for the complete satisfaction of this claim.

1082

The Counter-Claim

A

New Haven's Claim To The Sinking Fund

The lease of 1906 contained a mutual covenant that so much of the rentals paid by the New Haven "as shall be applied to payments into such sinking fund . . . shall create a claim of the lessee upon the lessor for the entire contents of the sinking fund, at the date of payment of the bonds, . . ." The bonds in fact were issued 1083
to mature in 1951.

On October 23, 1935, when the New Haven filed its petition in these proceedings, the sinking fund contained bonds having an aggregate face value of $4,493,000 and $167,674.61. On that date the market value of the contents of the fund was just under $5,000,000. The New Haven claims a property right in that fund.

The claim must be disallowed. Under the lease the New Haven acquired merely a *contract* right

1084 which was stated not to mature until 1951. The payments made by the New Haven prior to these proceedings, in so far as they were applied to the sinking fund, were by the lease expressly stated to be a part of the stipulated rental. Payments made by way of rent may not serve as the foundation for a property right at least in the absence of a contract to that effect. The contract here (1) has been breached by the New Haven and (2) does not purport to create a present property right.

1085 Doubtless the loss to the New Haven of the inchoate right with respect to the sinking fund was a factor which the New Haven trustees took into account when they recommended the rejection of the lease. The estate cannot have its pudding and eat it too.

B

New Haven's Claim Relating to Extensions

1083 The New Haven invoking a provision in the original lease covering the contingency of "the termination of this lease for any cause," counterclaims for "the actual value of such extensions" to the lessor's trackage as were made while the lease was in effect, at a cost of over $500,000 to the New Haven.

The lease provides that this value shall be the actual value "appraised at the time of such termination as physical property" by agreement, if possible; otherwise by arbitration.

Upon the hearing, the New Haven offered no evidence of "actual value" based either upon such an appraisal or upon an award of arbitration. It offered no evidence to show that it had

theretofore *requested* arbitration, as provided in 1087
the lease.

To be sure, counsel for C. R. & L. forthwith refused the request made, so as far as appears, for the first time at the hearing to agree on the disputed values or to appoint a representative of C. R. & L. for the joint appraisal contemplated by the lease. But there was still nothing to show that the New Haven trustees had ever requested the Chief Justice of the Supreme Court of Connecticut to appoint an arbitrator. Thus no breach of the covenant for arbitration was proven and 1088
the New Haven was not in position to press this item of claim without proof of value.

But even if it appeared that C. R. & L. had wrongfully refused to honor its covenant to arbitrate, I question whether the Court could properly make any award in the absence of substantial evidence of value.

This item of counter-claim is also disallowed. And the other grounds of counter-claim originally raised seem to have been abandoned.

RESERVED RULINGS ON THE EVIDENCE 1089

During the hearing, several objections were made to offers of evidence, upon which the court with the consent of the parties reserved ruling. That the record of fact may have precise definition these rulings I will now indicate, identifying each objection ruled upon by page reference to the typed transcript of evidence.

1.	Objection	by	debtors	pg.	2. Overruled.
2.	"	"	"	"	11. Overruled.
3.	"	by	claimant	"	472. Overruled.
4.	"	"	"	"	549. Overruled.

1090 No mention appears in the briefs of other objections upon which ruling was reserved. Such objections, if any, may therefore be deemed abandoned.

CONCLUSION

Appropriate orders to accomplish all the rulings indicated in this memorandum may be settled in chambers, on notice.

Dated at New Haven, September 1, 1937.

1091

CARROLL C. HINCKS
U. S. D. J.

FOOT-NOTES

1. This instrument named The Consolidated Railway Company as lessee. But this company was shortly thereafter merged with the New Haven which may, therefore, for all present purposes be considered as the original lessee. Nor 1092 does the fact that the New Haven guaranteed the original lease or that this guaranty still continues, affect any questions here in issue.

2. This transaction between the New Haven and The Connecticut Company was accomplished by two instruments executed on the same day; first, a contract covering not only the trolley properties held by lease from C. R. & L., but also numerous other properties either owned outright by the New Haven or held by it on lease from others, and calling for a rental equal to three-quarters

of that stipulated in the original lease from C. R. & L. (the sublease to the Housatonic Company calling for a rental equal to one-quarter of the rent reserved in said original lease); and, second, a sublease covering only the trolley properties demised in the original lease, specifying only a nominal rental. 1093

3. It is urged that the "acceptance" which the original lease required of an *assignee* was to be found in that language of the instrument of demise whereby the Connecticut Company expressly assumed the obligations arising out of the original lease. The argument overlooks the fact that the original lessor expressly stipulated for the direct contractual relationship with any *assignee* which would result from filing an acceptance with the original lessor. It also overlooks the fact that the assumption of obligations under the original lease by The Connecticut Company was subject to a right of termination without the consent of the original lessor. 1094

4. The debtor urges that as an offset against accrued rentals the net earnings for the year ending October 31, 1936 may not be used because of certain vague evidence that after repossession in November, 1936, the earnings increased. This evidence, however, wholly related to *gross* earnings. The burden on the claimant was sustained by showing the net earnings for a year, and if the debtor was not satisfied to accept this figure as a base, it lay within its power to require a disclosure of the subsequent earnings. 1095

1096 5. C. R. & L. has also contended that it has sustained damage by reason of the breach of the covenant of maintenance, estimated at $417,391.23 annually. This contention is rejected (1) because for aught that appears this item was once reflected in the figure of net earnings shown in *Ex. I*, paragraph (6), and (2) because a maintenance figure for one year may not be fairly used as a base for a longer period especially in view of the change in operations from trollies to busses. Maintenace charges lack the quality of
1097 recurrency inherent, for example, in real estate taxes.

1098

IN THE 1099

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor. No. 16563 1100

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor. No. 16587 1101

Order on Rehearing on Claim of Connecticut Railway and Lighting Company

This court having entered its Memorandum of Decision upon the above entitled claim on September 1, 1937, on September 15, 1937, the claim-

1102 ant filed an affidavit praying for a supplemental hearing for the limited purpose of showing that the record of fact contains substantial evidence of depreciation accruals and tax accruals upon the demised property of the claimant for the year November 1, 1935, to October 31, 1936.

On September 27, 1937, the parties appeared and were heard upon the claimant's petition as aforesaid. The court having heard the parties finds that the claimant's deficiency of proof with respect to the items above mentioned, if indeed any such deficiency exists, is a technical deficiency
1103 only, and

IT IS THEREFORE ORDERED that claimant's prayer for further hearing upon the two items mentioned be and it hereby is granted, subject of course to the exception of the debtor.

Dated at New Haven this 27th day of September, 1937.

CARROLL C. HINCKS,
United States District Judge.

1104

IN THE 1105

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	No. 16562

1106

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor.	No. 16587

1107

Supplemental Stipulation on Proofs of Claim of Connecticut Railway and Lighting Company Against the Connecticut Company and The New York, New Haven and Hartford Railroad Company

This cause having come on for rehearing September 27, 1937 it is stipulated and agreed by

Supplemental Stipulation on Proofs of Claim of Connecticut Railway and Lighting Company Against the Connecticut Company and The New York, New Haven and Hartford Railroad Company.

1108 counsel that the following facts may be taken as true:

1. The depreciation accruals for the year November 1, 1935 to October 31, 1936 on property repossessed by Connecticut Railway and Lighting Company November 16, 1936 were $133,938.53 and the tax accruals on said property and its operation for that year were $145,660.14, which figure does not include local real estate taxes.

2. The $183,911.34 heretofore stipulated as net
1109 income for said year includes insurance premiums paid in the sum of $2,831.15.

Dated: September 27, 1937.

H. J. Wells
Attorney for the Trustees of the Property of The New York, New Haven and Hartford Railroad Company.

James Garfield
Attorney for The Connecticut Company.

1110

Emmet, Marvin & Martin
By George W. Martin
Attorneys for Connecticut Railway and Lighting Company.

ORDER No. 214. 1111

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	No. 16562

1112

ORDER No. 62.

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

IN THE MATTER OF THE CONNECTICUT COMPANY, Debtor.	No. 16587

1113

Order Upon Claims of Connecticut Railway and Lighting Company

The claims of Connecticut Railway and Lighting Company against The New York, New Haven and Hartford Railroad Company and The Con-

1114 necticut Company in the above-entitled proceedings have come on for hearing and the Court having considered the facts and arguments presented and having issued its Memorandum of Decision dated September 1, 1937 and due notice of the settlement of this order to give effect to said decision having been given, it is

ORDERED, ADJUDGED AND DECREED:

1. For damage or injury to Connecticut Railway and Lighting Company accrued to June 30,
1115 1937 resulting from the rejection on December 18, 1935 by said The New York, New Haven and Hartford Railroad Company and the Trustees of its property of the lease dated December 19, 1906 between said Connecticut Railway and Lighting Company, and The Consolidated Railway Company, there is hereby allowed as a common claim but only against the estate of said The New York, New Haven and Hartford Railroad Company the amopnt of $1,263,412.92, with leave to said Connecticut Railway and Lighting Company to apply, within such time as may be hereafter
1116 fixed by this Court in the proceedings of said The New York, New Haven and Hartford Railroad Company for final hearing upon lease claims, for a supplemental hearing to liquidate any damage or injury to said Connecticut Railway and Lighting Company from such rejection which may accrue from July 1, 1937 to the date of said final hearing. This item of claim against The Connecticut Company is hereby wholly disallowed.

2. The Court finds that rental stipulated in said lease, accrued and unpaid on October 31, 1935, amounted to $304,472.13. Said amount is hereby

allowed as a common claim against the estate of 1117
each of the aforesaid Debtors, provided, however, that Connecticut Railway and Lighting Company shall not receive satisfaction of said claims in excess of said amount.

3. The Court finds that taxes assessed against Connecticut Railway and Lighting Company, payable by the lessee under said lease, proved to have become payable prior to December 18, 1935 and unpaid by either of the aforesaid Debtors, amounted to $27,858.75. Said amount is hereby allowed as a common claim against the estate of 1118
each of said Debtors, provided, however, that Connecticut Railway and Lighting Company shall not receive satisfaction of said claims in excess of said amount.

4. The item of claim for damage for breach of covenant in the abandonment without written consent of Connecticut Railway and Lighting Company of a trolley line on Arch Street, New Britain, is disallowed as a claim against either estate. 1119

5. All claims against either of said Debtors for deficiencies in the property repossessed by Connecticut Railway and Lighting Company are hereby disallowed except that the Court finds that pursuant to Order No. 20 entered May 18, 1936 in the reorganization proceedings of The Connecticut Company, said Debtor paid an aggregate of $173,537.35 as principal and interest due on conditional bills of sale covering 46 busses which in the following November were turned over to Connecticut Railway and Lighting Company and

1120 that said payments were proper offsets to the claim of said Company against the estate in administration. The aggregate amount of said payments, viz., $173,537.35 is hereby allowed as a common claim against the estate of each of said debtors, provided, however, that Connecticut Railway and Lighting Company shall not receive satisfaction of said claims in excess of said amount.

6. The Court finds that subject to the jurisdiction of the Connecticut Public Utilities Commission, Connecticut Railway and Lighting Company is entitled to repossess and operate portions of disputed bus lines as follows:

1121

(a) New Haven-Bridgeport route, via Milford Turnpike, designated as Route No. 1 in Claimant's Exhibit 36—So much of said route as lies west of the Orange-West Haven Town Line.

(b) Hartford-New Britain route, via West Hartford designated as Route No. 2 in Claimant's Exhibit 37—So much of said route as lies south of the Newington-West Hartford Town Line.

1122

(c) Special bus line for tobacco workers, New Britain-Hartford, designated as Route No. 3 in Claimant's Exhibit 37—So much of said route as lies within the Town of New Britain.

(d) Stamford-Darien Railroad Station route designated as Route No. 5 in Claimant's Exhibit 39—So much of said route as lies within the Town of Darien.

Order Upon Claims of Connecticut Railway and Lighting Company.

The Court further finds that Connecticut Railway and Lighting Company is entitled to four additional busses of 30 passenger capacity for the operation of the portions of lines herein awarded and to an accounting of the net revenues received by The Connecticut Company from operation of said portions since November 16, 1936. The Connecticut Company is hereby ordered, subject to the jurisdiction of the Connecticut Public Utilities Commission, to surrender to Connecticut Railway and Lighting Company the portions of lines herein awarded together with four busses as aforesaid for their operation and within sixty days of the date of said surrender to account to Connecticut Railway and Lighting Company for the net revenue from operation of said portions between November 16, 1936 and said date of surrender. Within ninety days from said date of surrender the parties shall report to this Court the extent to which they are in agreement as to the correctness of said accounts and the matters, if any, as to which they are not in agreement in order that the Court may adjudicate as to the said accounts and may determine what sum, if any, is payable to Connecticut Railway and Lighting Company by reason of the operation of its said property. 1123 1124 1125

Claim for the eastern extremity of the Stamford-Darien route designated as Route No. 6 in Claimant's Exhibit 39 is hereby disallowed.

Claim for ten parcels of real estate have been severed by agreement of the parties and are not dealt with herein.

7. The claim against The Connecticut Company for rejection of an alleged contract to become a

1126 tenant of Connecticut Railway and Lighting Company is hereby disallowed.

8. The Court finds that there remains due after valid credits as compensation to Connecticut Railway and Lighting Company for use of its property from October 31, 1935 to November 16, 1936 the amount of $151,243.73 (consisting of stipulated rent from November 1 to December 18, 1935 of $138,024.73, proved taxes and fire insurance for the same period of $1,168.65, and net earnings from December 18, 1935 to November 16, 1936 of
1127 $333,227.70, less advances and credits of $321,-177.35). This amount, namely $151,243.73, is hereby allowed against The Connecticut Company as an operating expense of the estate of said Company in administration.

9. All other claims whatsoever of Connecticut Railway and Lighting Company against either of the aforesaid Debtors are hereby wholly disallowed.

10. The counterclaims to a right in the sink-
1128 ing fund of Connecticut Railway and Lighting Company are hereby disallowed.

11. The counterclaims to the alleged cost or value of extensions made to Connecticut Railway and Lighting Company property are hereby disallowed.

ENTER:

C. C. HINCKS,
District Judge.

Dated: Sept. 27, 1937.

Case 1129

UNITED STATES DISTRICT COURT

District of Connecticut.

In Proceedings for the Reorganization of a Railroad.

In the Matter of The New York, New Haven and Hartford Railroad Company, Debtor.	No. 16562

1130

In Proceedings for the Reorganization of a Corporation.

In the Matter of The Connecticut Company, Debtor.	No. 16587

1131

This cause having come on to be heard before the Honorable Carroll G. Hincks, Judge of the United States District Court for the District of Connecticut, on the 30th day of June, 1937, the following appearances were had:

For Connecticut Railway and Lighting Company:
George W. Martin, of Counsel.

For The Connecticut Company, Debtor
James Garfield, of Counsel.

1132 *For the Trustees of The New York, New Haven and Hartford Railroad Company, Debtor:*

H. J. WELLS, of Counsel.

Exhibit A, attached to the Claimant's proofs of claim in each of the above entitled proceedings, was considered as being in evidence as part of the pleadings.

It was stipulated by Counsel that the C. R. & L. claims against The New York, New Haven and Hartford Railroad Company and against The Connecticut Company might be
1133 prosecuted simultaneously at this same hearing, and that any objections to evidence on behalf of one of the said Debtors should be considered as being put forward on behalf of both of the Debtors.

Exhibit 1, the Stipulation as to some of the facts entered into by the parties, was offered in evidence over objection by The Connecticut Company, which was subsequently overruled.

Counsel for The Connecticut Company stated as follows:

1134 I wish at this time to object to the introduction of any evidence through this stipulation or in any other form in the Connecticut Company proceeding on the ground that the C. R. and L. is not a creditor of the Connecticut Company and was not injured by a rejection by the Connecticut Company of any lease or executory contract.

The Court reserved ruling on this objection and stated that exception would enter as of course upon an adverse ruling.

Exhibit 2 was likewise received in evidence, 1135
being the Stipulation with regard to certain participation and abandonment contracts entered into between the three parties.

CARL H. ZIPF was thereupon called by the Claimant, C. R. & L., as a witness, and testified:

I am a Certified Public Accountant, and associated with the firm of Lybrand, Ross Bros. & Montgomery, who are Accountants. This firm has made audits of the C. R. & L. books since 1931. I have examined the leases and agreements attached to the proofs of claims in these 1136
proceedings, and I have also examined transcripts of the books of The Connecticut Company for the years 1935 and 1936, and I have seen and examined a report made by The Connecticut Company which was given to C. R. & L. covering 10-1/2 months operation of the C. R. & L. properties from January 1, 1936, to November 16, 1936. The stipulated rent for one year for the C. R. & L. railway properties, (excluding the gas and electric properties,) amounts to $1,049,563.50. The local real estate taxes on the property belonging to C. R. & L and operated by 1137
The Connecticut Company for the year 1936 are $2,755.68. Certain of the bondholders of C. R. & L. claim that the company should pay 2% of the income tax on their bond interest, and three-quarters of this income tax payable by C. R. & L. on bondholders' interest amounts to $2,762.44 for the year 1936.

Exhibit 3 was received in evidence, being a copy of an income tax return for the year 1936, showing the calculation of the tax on the bond interest payable at the source.

1138 By Mr. Martin:

Q. Do you know how much federal income tax was payable in 1936 by C. R. & L., assuming that it received, in 1935, stipulated rental for its electric railway properties in the sum of $1,049,563.50?

Mr. Wells: I object to that question, your Honor. He asks how much tax was payable by the C. R. & L. and then he proceeds to make assumptions which may or may not be true. I think they were not true.

1139 Hincks, *J.*: Let us hear the precise question.

(The last question was read.)

A. The amount which C. R. & L. would pay on that basis would be in excess of the amount of $100,593.37, because that amount represents three-quarters of the rental or the tax which C. R. & L. would pay on that assumption that they received $1,049,563.50 rent in 1935, so that the amount—the total amount paid or payable by C. R. & L. would be approximately $133,000 rather than $100,593.37. The amount stated here represents three-
1140 quarters of that amount.

By Hincks, *J.*:

Q. Is that calculation based on the actual income of C. R. & L. for the calendar year 1935 modified in one respect only, namely that it received the entire stipulated rental instead of something less than that? A. That is true, yes.

By Mr. Martin:

Q. Well, the figure $100,593.37 represents three-quarters of the income tax payable on the total

income for that year, assuming the assumptions 1141
that I put to you; is that right? A. That is right, yes.

Q. Do you know what federal capital stock tax is payable by C. R. & L. for the year 1936? A. Yes.

Q. How much is it? A. $1,000. That is based on value assigned to the capital stock for the purpose of the federal capital stock tax.

Q. Have you added up the four items of taxes which you testified to, and if so, how much do they come to? A. $107,111.49.

Q. Do you know the annual cost of maintenance 1142
of the electric railway properties belonging to C. R. & L., and if so, for what year are you taking it? A. Well, the amount for the year ended October 31, 1936, would be $417,391.23.

Q. Do you know the annual cost of fire insurance on the electric railway properties? A. The annual cost of fire insurance on the properties returned to C. R. & L. is $3,691.08.

Q. That is based on the property returned on November 16, 1936? A. November 16, 1936. That is right.

Q. Do you know how much of the stipulated rent for the electric railway properties belonging 1143
to C. R. & L. was unpaid on October 31, 1935? A. Yes.

Q. How much? A. $304,472.13.

Q. And as of that same date, do you know the sum of the federal taxes, by which I mean the bondholders interest tax, the federal income tax and the federal capital stock tax, that were unpaid on that date?

Mr. Garfield: Just a minute, your Honor. I don't know whether that question refers to

1144 taxes on this sum of $304,000 or on something else.

Mr. Martin: It assumes that the full stipulated rent to that date has been paid.

Mr. Wells: You asked what taxes remained unpaid. You mean actual taxes or hypothetical taxes?

Mr. Martin: Well, replying to Mr. Wells, I mean both. What I mean is this. There were certain taxes actually due on account of installments of the stipulated rental which had actually been paid to C. R. & L. during 1935. There were other items consisting of taxes
1145 accrued but not paid, which I have assumed for the basis of the computation have accrued on the stipulated rental if it had been paid in full on the dates when it was due. In other words, this item includes both a hypothetical assumption that the rent was actually paid, and also the taxes actually due and unpaid on the rent which was paid.

The Witness: Well, on that basis the amount of taxes unpaid, October 31, 1935, would be $108,904.20.

1146 By Mr. Martin:

Q. Can you tell me what the stipulated rent for the electric street railway properties was for the period October 31 to December 17, 1935 and whether it was unpaid—and whether it is unpaid still? A. The amount of rent—stipulated rent accrued during that period, which is still unpaid, is $135,427.55.

Q. Can you tell me the federal taxes which I have just mentioned accrued—which would have accrued—for the period October 31 to December 17, 1935, being payable by C. R. & L., had that

stipulated rent been paid? A. The full amount 1147
of tax for that period would be in excess of the amount I wish to answer. The amount I will give you is three-quarters of the tax for that period.

Q. Mr. Zipf, let me tell you something. Whenever I say electric street railway properties, that is another way of saying three-quarters, see? A. All right. The amount of tax then would be $15,135.14.

Q. Can you tell me the stipulated rent which remained unpaid for the period December 17, 1935 to November 16, 1936 for the electric street 1148
railway properties? A. Yes.

Q. How much? A. $957,867.77.

Q. And take those three items of federal taxes, can you tell me how much they would have amounted to for that period and whether they are also unpaid, assuming that the rent was paid in full for the period? A. The taxes would be $95,561.31, and they are still unpaid.

Q. Mr. Zipf, I ask you to assume the following facts: Assume that one year's stipulated rent, amounting to $1,049,563.50, is three-quarters of the annual income for the year 1936, received by C. R. & L.; and then assume that in addition to 1149
that annual income it receives $52,500 additional; and then assume that with respect to this three-quarters amount the bondholders interest tax is paid by the C. R. & L. and amounts to $2,762.44; and assume that the part of the federal income tax payable by C. R. & L. on this three-quarters amount comes to $100,593.37; and assume that the federal capital stock tax levied on it because it is an operating company, amounts to one thousand dollars—can you tell us that stipulated rent, if tax free, from the taxes which I have just told you, would be worth? A. Yes.

1150 Q. How Much? A. It would be worth $1,153,-919.13.

Q. That is for fifty-two weeks? A. That is for one year, yes.

Q. Can you tell me what that would be worth for 54 weeks? A. Yes. It would be worth $1,-198,300.82.

Q. Assuming that the stipulated annual rental of $1,049,563.50 is tax free from the three federal taxes which I have told you, and assuming that the operating income for one year from the C. R. & L. electric railway properties would be $183,911.34, what would the difference be? A.
1151 The difference would be $865,652.16.

Q. And assuming that the balance of the term of the lease under which the electric street railway properties were rented is 969 years, what is the present value of this difference calculated for the balance of the term of the lease at 5%. A. That would be $17,313,043.19.

Q. And if you calculated it at 4% what would it be worth? A. It would be worth $21,641,303.99.

Q. And if that difference of $865,652.16 were tax-free from the three federal taxes which I have mentioned to you, what would the value
1152 of that difference be worth calculated over the balance of the term at 5%? A. That is, you mean an additional amount in order to make the rent tax free?

Q. Yes. A. It would require an additional amount of 5% of $2,142,229.79.

Q. Making the value of that difference tax free discounted over the balance of the term at 5% how much? A. $19,455,272.98.

Q. And if that tax free difference were discounted at 4% over the balance of the term how

much would it be worth today? A. You mean 1153
the tax free?

Q. Yes. A. Or the amount required to make it tax free?

Q. Yes. A. $2,577,787.29.

Q. Making the present value of the difference discounted at 4% tax free how much? A. $24,319,091.23.

• • • • • •

These taxes were not paid by The Connecticut Company but were paid by C. R. & L. who, in turn, billed The Connecticut Company for their portion of the taxes. Of the figure, $108,904.20, 1154
the amount which represents actual taxes assessed is $27,858.75, and $81,045.45 represents the tax computed to be accrued at October 31, 1935, on rentals received and rentals accrued but not received. Likewise, $15,135.14 represents the amount of additional tax which would be payable if the rent were received for the period from October 31, 1935, to December 17, 1935, and the figure $95,561.31 represents the taxes which would be payable by C. R. & L. if the stipulated rent were paid for the period from December 17, 1935, to November 16, 1936, the date 1155
when the property was given back.

• • • • • •

Hincks, *J.*: The witness has testified, referring to item 3 on your claim, that the annual cost of maintenance is $417,391.

By Hincks, *J.*:

Q. Let me ask him where he gets that figure. How was it made up? A. That was obtained—I can tell you in summary what it consists of. I can further tell you it was obtained from state-

ments which were submitted by The Connecticut Company to Connecticut Railway and Lighting Company.

By Mr. Martin:

Q. Mr. Zipf, can't you break that down into four or five items for the Court and let him know what they are? A. Yes, I think I can do that. (Pause.) The figure of $417,391.23 consists of the following items: Maintenance of way and structures—this is for the fiscal year from November 1, 1935, to October 31, 1936—maintenance of way and structures allegated to railway operations exclusive of cleaning and sanding tracks and removal of snow and ice, $31,626.65, or the amount including $417,391.23 and $114,151.97. Maintenance and equipment allocated to railway operations, $103,108.41. Maintenance of way and structures allocated to bus operations, exclusive of removal of snow and ice, in the amount of $490,31, $4,457.26. Maintenance of equipment allocated to bus operations, $192,897.89. Maintenance included in cost of power, $2,275.70, or a total of $417,391.23. Those figures do not include provisions for depreciation which is included in the company's reports covering these particular items of expense, because there were no expenditures made for depreciation; and the amount we have stated represents actual expenses for the period as shown by the records of The Connecticut Company.

Q. Those figures were taken from The Connecticut Company's books, were they? A. They were taken from statements prepared presumably from The Connecticut Company books, because they are statements which were submitted

to the Connecticut Railway and Lighting Com- 1159
pany.

Q. By The Connecticut Company? A. By The Connecticut Company.

By Mr. Martin:

Q. This annual cost of maintenance at $417,391.23 is the amount of maintenance shown by the books of the Connecticut Company for the last year that they operated the property; is that right? A. That is right except that it does not include the period of half a month for November, 1936, when the property was in their 1160
possession.

Q. Excludes the last two weeks? A. Yes, but it covers a full year's period of operations.

Q. You testified that the annual fire insurance premiums came to $3,691.08?

Hincks, *J.*: I do not think so, Mr. Martin. Isn't Mr. Garfield correct in stating that his testimony was confined to specific years?

Mr. Martin: Yes, you are right, your Honor.

By Mr. Wells: 1161

Q. You say, Mr. Zipf, that was the amount shown on The Connecticut Company books, this $417,000? A. That is after eliminating from the maintenance account depreciation and certain accounts, removal of snow and ice and sanding and cleaning of tracks, which we did not consider to be maintenance costs.

Q. In other words, this is the figure that you and the accountants for the New Haven agreed upon as the proper maintenance figure for that year? A. I don't know that we agreed with your

1162 accountants on it. It is prepared from the reports that were prepared by them, so that the charges must be correct. We must be in agreement on them with that assumption.

Q. You did agree to these figures? A. Well, they were reports which were submitted by The Connecticut Company to Connecticut Railway & Lighting, and accepted as being correct by Connecticut Railway & Lighting.

Q. It is on the basis of these figures that the report to the Court of the avails from interim operation was computed? A. Yes, that is right.

1163 Exhibit 4 was received in evidence, showing items going to make up the figure $108,904.20.

That figure is based on the assumption that Connecticut Railway and Lighting Company would receive the stipulated unpaid rentals that were accrued at October 31, 1935.

Mr. Wells: The first item in this statement, $24,739.14, represents an actual payment?

The Witness: It is part of an amount paid by the Connecticut Railway & Lighting Company. In other words——

1164

By Mr. Wells:

Q. That is an actual payment then, that item? A. Yes.

Q. But that includes a certain amount upon the theory that the tax was going to be paid by somebody else, doesn't it? A. Yes.

Q. So that perhaps that represents too much? There is a possible refund, you admit, for a portion of that amount? A. That is a question for consideration by the Internal Revenue Department.

Q. Yes, I know it. But you admit that there 1165
is a proper basis for a refund claim? A. Well, I will say this, that there is included in the amount which is subject to tax an amount which represents an estimated amount receivable as tax.

Q. Don't you think that should be further broken down? Have you done that? A. No, for——

Q. Could you do it? A. It could be done if it were assumed that such a claim is acceptable and will be recognized by the Treasury Department.

Q. I am simply asking whether you could do 1166
that? A. It could be done, yes.

Mr. Wells: I ask that the witness be required to break that down further.

Mr. Martin: Your Honor, I have no objection to working this witness to death, but I suggest that it does not make any difference whether there was a refund on a basis that a tax was to be paid by somebody else which afterwards was not paid by somebody else, because what I am offering this figure for is not to show what were 1167
actually paid or what taxes will ever have to be actually paid by C. R. & L., but to try and find out what the value of the rent, tax free, would amount to, and that rent was not paid. When the rent was not paid of course the taxes were not paid on it, but what I am trying to find out is not what taxes actually were paid or on what basis they were paid, but what that rent is worth tax free.

1168 Asked whether he had recommended filing a claim for a tax refund of part of the item of $24,739.14 the witness replied that if he were handling the case perhaps he would attempt to file a claim but he would not necessarily expect to have it honored.

Exhibit 5 was received in evidence, showing the items going to make up the figure $15,135.14.

Exhibit 6 was received in evidence, showing the details of the item of $95,561.31.

1169 Exhibit 7 was received in evidence, showing the calculations of the stipulated rentals for various periods.

PATRICK T. REILLY, called as a witness on behalf of Connecticut Railway & Lighting Company, being first duly sworn by Clerk Pickett, testified as follows:

By the Clerk:

1170 Q. Your full name? A. Patrick T. Reilly.
Q. Where do you reside? A. Wilmington, Delaware.

DIRECT-EXAMINATION BY MR. MARTIN:

Q. Mr. Reilly, what is your business? A. I am the manager of the Delaware Electric Power Company, Delaware Bus Company, and Southern Pennsylvania Bus Company.

Q. How long have you been in that business? A. I have been in the street railway business for 41 years.

Q. Since 1896? A. Yes, sir. 1171

Q. Have you worked in various departments of that business? A. Worked in all departments.

Q. Have you been in charge of maintenance of equipment in trolley lines? A. Yes, sir.

Q. Are you familiar with the actual cost of trolley cars and parts of trolley cars? A. I am.

Q. Are you familiar with the expenses of upkeep of trolley cars? A. I am.

Q. Are you familiar with the length of time various parts will last and how much work can be gotten out of them? A. Yes.

Q. Did you make a survey and inspection of the trolley cars belonging to C. R. & L. that were 1172 turned over by the Connecticut Company on November 16, 1936? A. I did.

Q. Did you make reports of this inspection? A. I did.

Q. I show you this report purporting to cover the trolley cars in question at Bridgeport, Connecticut, and ask if that report was made by you. A. It was.

Q. Will you explain to us how the report is made up, so that we will understand it? A. The report is made up first by a personal examination of all of the cars at Bridgeport. It is made with 1173 regard to the time they were purchased, with regard to the prices that prevailed, approximate prices that prevailed at that time, and then from an examination of each car, the parts of each car, estimates were made by me as to the amount of the depreciation on each car.

In other words, a street car is largely an assembled unit. It has more than 100 different parts, and each one of these parts were examined. I endeavored to approximate the original cost of these items. Then after an examination I

1174 determined the depreciation on the various items or various parts that go to make up the whole assembled car, and arrived at an amount—and arrived at the depreciation of each car.

By Hincks, *J.*:

Q. How did you determine depreciation? By the application of a formula, or by your individual judgment as to the physical conditions of the various items of property? A. By individual judgment, by examination and by measurements, calibration.

1175

By Mr. Martin:

Q. Then in this report, is each car reported on, separate car at Bridgeport? A. It is.

Q. On page 4 of the report there is a recapitulation or a summary? A. There is.

Q. Of what was found with regard to the Bridgeport cars. Is that so? A. That is true.

Q. And some of those cars are reported there to be obsolescent. Is that correct? A. That is correct.

Q. How did you decide whether a car was
1176 obsolescent or not? A. The cars that are marked obsolescent on page 4 of this report were cars that were purchased in 1907, 1908, 1910 and 1911. These cars are of the old—these cars are of a wooden construction throughout. They have wood side panels, wood vestibules, seating arrangements that are largely the long longitudinal seats. Some of them have cross seats. Their riding qualities—I rode on them—are not good. Their general appearances are poor. They do nothing at all to invite new business. On the contrary, it would be my judgment that nobody would

patronize them except where necessity arises. They would certainly do nothing, in my judgment, to promote new riding, and when equipment of this kind gets to that stage, gets where its appearance and noise and general unattractiveness does not attract new business, then it becomes in my judgment obsolete and worthless and must be replaced by a vehicle that will not only keep the business that you have but also attract new business, if you are going to stay in business at all. 1177

Q. Upon the cars upon which you have figured depreciation, what was the principle that you went on in figuring the depreciation? A. The principle that I went on was to assume an article or an item or a part worth 100% when it was new. Then if it was, in my judgment, depreciated 50%, why, of course, I assume that it was depreciated 50% or it is now worth half its original value. 1178

By Hincks, *J.*:

Q. What did you mean when you spoke of calibrating these items? A. Well, for instance, wheels. A new wheel has substantially an inch and a quarter of depth or tread. When it is worn out completely it may get down to three-quarters or a quarter of an inch. Now then, the step between a quarter of an inch and its full wearing surface, two inches—I should have said two inches there instead of one inch—is what I meant by calibrating. 1179

By Mr. Martin:

Q. Does this report show the original cost of the car and the replacements required and the cost of those replacements? A. Yes, sir.

1180 Q. On what basis did you decide whether replacements were required or not? A. On personal examination.

Q. Well, would you say that replacements were necessary? For what purpose? A. For the purpose of making the car presentable and safe to operate.

Q. Not necessarily for the purpose of making it as good as new? A. Oh, no, no, not at all.

Mr. Martin: I offer in evidence the report on the Bridgeport trolleys indicating the present condition and the other things men-
1181 tioned in that report.

(*C. R. & L. Exhibit 8:* Report on Bridgeport trolley cars.)

Q. Mr. Reilly, I show you a document entitled "Report on equipment of C. R. & L. at New Britain, Connecticut", and ask if that was made by you? A. Yes, sir.

Q. That was the inspection survey and appraisal of the C. R. & L. cars at New Britain which were received on November 16, 1936, from the Connecticut Company. Is that so? A. That
1182 is true. All of these cars were inspected by me excepting five passenger cars and two service cars which were destroyed prior to the time I made my inspection.

Q. I see. And that report is compiled on the same general principles that the Bridgeport report was? A. It was.

Mr. Martin: I offer this report in evidence.

(*C. R. & L. Exhibit 9:* Report on New Britain trolley cars.)

Q. I show you a document purporting to be a 1183
report on equipment of C. R. & L. at Derby, Connecticut, and ask you if that was compiled by you? A. Yes, sir.

Q. And that likewise covers the C. R. & L. trolley cars in that territory and was compiled on the same principles that the other reports were? A. That is correct.

Mr. Martin: I offer the Derby report in evidence.

(*C. R. & L. Exhibit 10:* Report on Derby trolley cars.)

1184

Q. I show you a document purporting to be a report on equipment of C. R. & L. at Waterbury, Connecticut, and ask you if you made that report. A. I did.

Q. And that was made covering the C. R. & L. trolley cars at that point, received from the Connecticut Company, and compiled on the same principles on which the other reports were made up? A. That is correct.

(*C. R. & L. Exhibit 11:* Report on Waterbury trolley cars.)

1185

Mr. Martin: Wasn't there a short summary, a large one like this made by Mr. Reilly?

(Paper handed by Mr. Emmet to Mr. Martin.)

Q. I show you a document purporting to be a summary of—oh, excuse me. I will find out what this is—track and roadway and passenger and service car equipment of C. R & L. lines, and ask you if that was made by you? A. It was.

1186 Q. The track and roadway part of this summary is taken from reports made under your supervision but by Mr. Bryan. Isn't that so? A. That is correct.

Q. The trolley car summary part of this report is a summary of the four reports that I have put in evidence. Is that correct? A. That is correct.

Mr. Martin: I offer this report in evidence too.

Mr. Garfield: Are you going to put on the witness who made the roadway part?

Mr. Martin: Yes, as soon as Mr. Reilly gets
1187 off I will.

(*C. R. & L. Exhibit 12:* Summary of passenger and service car equipment.)

Mr. Martin: Here. Take that a moment. Those are some notes I made with you.

By Mr. Martin:

Q. Do you know how many trolley cars were taken over by C. R. & L. on November 16, 1936? A. 140 passenger cars. These figures are subject to a little correction. 140 passenger cars and 43. 120 passenger cars and 43 service cars,
1188 making a total of 163.

Q. How many of the passenger cars were old cars built previous to 1915? A. 33.

Q. And those cars, in your opinion and shown in your reports were obsolescent cars which must be replaced with modern equipment if passengers are to be induced to ride in them? A. Yes, sir, yes, sir.

Q. How much would the replacement of these 33 old cars with new cars cost?

Mr. Garfield: I object, your Honor. I object to that question.

Mr. Martin: I do not know just what the basis is. The man, I think, is qualified as an expert. 1189

Mr. Garfield: The basis is that the new cost of 33 cars is not of any importance. We were not required to furnish new cars in place of these old cars. We were required only to furnish them only whatever equipment was necessary to operate the line.

Mr. Martin: That is quite true and I will ask him a question in a moment too, on the depreciation.

Hincks, *J.*: Subject to connection the objection is overruled. 1190

By Mr. Martin:

Q. How much would the replacement of these 33 old cars with new cars cost? A. Approximately $16,000 each or $528,000.

Q. If these new cars were depreciated 50% what would their value be then? A. That would be a half of that or $264,000, if I figure it right. I will have to——

Mr. Martin: In order to explain to the Court and counsel why I asked that question, it is our contention that the trolley cars that we got should have been depreciated not more than 50%. That is, if a trolley car has a life of 10 years and we got 10 trolley cars, one ought to have been 10 years old and one brand new, and one two years old and one nine years old, and so on, and the result of such a system would be that the whole trolley car fleet should be depreciated 50%. That is the theory that we are going on here. 1191

1192 Q. Can you tell me about seven Birney cars in Derby? A. I can.

Mr. Garfield: How do you spell that word?
Mr. Martin: B-i-r-n-e-y.

By Mr. Martin:

Q. That is a kind of car, I believe. Do so. A. There were located in Derby or were when I was there and made my inspection, seven of what are known as Birney cars, Birney one-man safety cars. These cars were brought out during the war or immediately after the war and were in-
1193 tended largely to be put into operation in competition with jitneys which were so prevalent throughout the country at that time, and they were also the first cars that I know of that were operated by one man, and they were primarily a small, very light car on a single truck. The car, in addition, for the two reasons mentioned, was developed for its economic power usage, and further, for the use of street railways who had been pretty hard hit by rising prices during the war and were not in position to finance purchase of equipment which they would probably like to
1194 have. But the result is that these cars were intended largely to allow railways in poor financial condition to get over the hump until such a time as they could afford to get possibly better equipment. I recall that the first Birney cars I saw were here in Bridgeport. I think that was in 1918. They have all disappeared from the picture now. None are in use, but at any rate, the life of a Birney car does not compare at all with a standard conventional car nor is it as good in riding qualities nor does it attract business as well as the modern electric car. Cars that I ex-

amined were in reasonably good condition. They 1195
were, however, absolutely obsolete for present day traffic, do not coordinate at all with present street traffic, and as passenger-carrying vehicles they were, in my judgment, not fitted for that work at all and entirely obsolete.

Q. How much would it cost to replace these seven Birney cars with new cars? A. It would cost for new cars to replace those seven Birney cars about $16,000 apiece. (Pause.) $112,000. I don't believe in the service that they were operated that they should be replaced, however, by new trolley cars. They should be replaced by 1196
busses.

By Hincks, *J.*:

Q. Does that replacement figure you just mentioned take into account a replacement with equal capacity to the Birney cars? A. No, it takes in a little larger capacity. If you were to replace them at the same—to begin with, your Honor, the single truck car—and this is a single truck car—is obsolete to begin with. Nobody would buy a single truck car because of its rocking qualities, the many derailments it has, the side motion, and 1197
so on, and its poor riding qualities, so if there is a replacement of the street car at all, it must of necessity be a double truck modern car. Nobody would think of buying anything else. If, however, for comparative purposes, on the same sort of a car, I would assume that a single truck car would be purchasable for somewheres in the order of ten to eleven thousand dollars or from seven to eight thousand as a maximum for the single truck car.

1198 By Mr. Martin:

Q. I show you a document purporting to be equipment claim of Connecticut Railway & Lighting Company, and ask you if you had that compiled? A. I did.

Q. How does that fit in, Mr. Reilly, with the reports that have been offered in evidence? A. This report fits in in this respect, that of the 33 wooden cars bought in 1908, 9, 10 and 11 and thereabouts, I have indicated that these cars ought to be replaced at a cost of $16,000 each, or a total of $528,000. As to the seven Birney
1199 cars, I have indicated that these cars ought to be replaced by busses which have substantially the same seating capacity.

The Birney car is a 30-passenger car and the bus would be a 30-passenger bus, and the cost would be $9,000 each or $63,000.

In so far as all of the other cars are concerned, I have taken each car and listed the parts which should be either replaced immediately or parts that are depreciated to such an extent that they ought to be replaced very soon if not immediately, and given a detail on each car so that the
1200 cost of putting these cars in reasonably safe condition and to present a reasonable appearance is shown individually.

Q. Is there an estimate in the report that you have just looked at, showing your calculation of the amount of the claim of C. R. & L. for obsolescence and depreciation on trolley cars? A. Total claim, $634,000. $634,234.

Q. That, I think, assumes that 33 old obsolete cars should be replaced with modern equipment costing $16,000 a car or $528,000? A. That is correct.

Q. I think it also assumes that the seven 1201
Birney cars at Derby should be replaced with busses costing $9,000 each? A. That is correct.

Q. That would make a total of $63,000 at Derby? A. That is correct.

Q. It also assumes that the cost of repairs and replacements which are now required and the cost of repairs and replacements which will be required in the immediate future, would come to $43,234. A. That is correct.

Q. In other words, your total of $634,234 is the sum of those three items which I have just read to you? A. That is correct.

Q. Now I observe that the item with regard 1202
to the replacement of the 33 obsolete cars, you have included at the full amount and have not depreciated 50% pursuant to the formula that I just explained to the Court. A. That is true.

Q. If that were depreciated at 50%, the item of $528,000 would be cut in half. Is that correct? A. That is correct.

Q. In the same way the item of $63,000 for busses to replace the seven Birney cars at Derby would also be cut in half? A. That is correct.

Q. I ask you then if you have made calcula- 1203
tion showing the amount of the claim on the assumption that those two items that I have just mentioned should be depreciated 50% or cut in half? A. I can make it in a minute.

Q. I beg your pardon. A. I can give it to you in a minute. I haven't got it.

Q. It is in your memorandum here. It is on the second page. A. (Pause.) $334,448.

Q. That amount $334,448 represents $264,000 which is half the expense of replacing the 33 obsolescent cars, and the item $31,500 which is

1904 half the price of seven buses to replace the Birney cars at Derby? A. Yes.

Q. And an item of $38,948, which is a depreciation item representing the expense——

Mr. Garfield: Mr. Martin, do you mind letting the witness say what it represents?

By Mr. Martin:

Q. The third item is $38,948. What does that represent? A. (Pause.) The amount of claim, instead of being $234,448 according to your method of reducing the cost in half, should be
1905 $238,734. The $43,000 that you referred to above is made up of repairs that are apparent and replacements of parts that are depreciated to an extent that they ought to be replaced now or very soon.

Q. Does that mean that the item of $43,234—— A. Is firm——

Q. I beg your pardon. A. That is a firm figure, yes, sir.

Q. Mr. Reilly, I don't myself understand how we arrive at the figure $38,948.

1906 Mr. Garfield: The witness has not arrived at it.

The Witness: That was arrived at by taking out the apparent repairs or the necessary repairs that should have been made on the 33 1100 class cars and the seven Birney cars, and should not have been taken out of the calculations.

By Mr. Martin:

Q. Well, in your opinion it should not have been? A. In my opinion it should not have been.

Q. And my remembrance is that I told you to take it out. A. Yes, I think you did. 1207

Q. So that $38,948 is the item which I insisted by substituted for the item $43,234? A. That is correct.

Mr. Garfield: Mr. Martin, have you been qualified as an expert?

Mr. Martin: I have no doubt I could, but I haven't been.

Mr. Garfield: I am sorry you couldn't, if your figures would be lower than your witness' figures.

Mr. Martin: Mr. Garfield, the witness has taken from me the 50% formula although he did not personally agree with it. I am only using him to produce the basic facts. The figures which I have insisted he use are the ones that go to make up the claim. 1208

CROSS-EXAMINATION BY MR. GARFIELD:

Q. What is the ordinary life of a trolley car, Mr. Reilly? A. The ordinary life of a trolley car which was built anywhere along from 1917 on is about 30 years.

Q. Prior to that time some cars were built very good and would last from 25 to 30 years excepting the single truck car which has a life of very much less. 1209

Q. Double truck cars of that time should last 30 years or more? A. Not more than 30 years. 25 to 30 years. Going beyond 30 years is stretching it.

Q. Are you familiar with the cars which the cars built in 1908 to 1911 replaced? A. Oh, no. No, sir.

1210 Q. That goes back of your time? A. I know nothing beyond that.

Q. Did you have anything to do with the C. R. & L. back in 1908 to 1911? A. I did not, no sir.

Q. You don't know what they had before they bought those cars? A. Oh, no, no, sir.

Q. The Birney cars, you say, should not be replaced with trolley cars? A. That would be my judgment.

Q. Why? A. Well, the territory isn't—methods of operation have changed so much in recent years that the territory does not lend itself to
1211 trolley car operation now when a more improved transportation method could be put in with buses.

Q. Those cars were in operation in Derby? A. Yes, sir.

Q. Do I understand from that you think trolley operation would not be as profitable in Derby as bus operation now? A. I think so. That is true.

Q. Is Derby different from the rest of the territory in that respect? A. Yes, it is different. Derby is hilly and it doesn't lend—and the streets are pretty narrow up there, particularly up along Elizabeth Street and up in that general direc-
1212 tion, and it doesn't lend itself to trolley operation near as good as bus operation.

Q. Where were these 33 other cars that you have called obsolete being operated? A. Where were they being operated?

Q. Yes. A. They weren't being operated at all. They were standing on the track in the barns in Bridgeport, some in Waterbury, I believe, and one or two at Derby. I can give the figures to you if you wish.

Q. You say they were not being operated? A. They were not being operated when I saw them, no, sir.

Q. When did you see them? A. In March of 1213
this year, and I had seen them prior to that time. too.

Q. Do you know how long it was since they had been operated? A. No. I was informed that they were operated in emergency, for emergency purposes, during snow storms, and sometimes run out as shop trippers. As a matter of fact, I rode on one shop tripper or two, but I am speaking of when they are not operated, that they are not in operation.

Q. What is a shop tripper? A. That goes to a shop to meet the men when their work is over 1214
and carries them into town.

Q. These cars were adequate for that purpose? A. Oh, yes—that is anybody's guess.

Q. They were used for that purpose at any rate? A. Yes.

Q. And the men didn't leave? A. Well, they didn't get many on the trip I was on.

Q. You say these cars were used for emergencies during snow storms? A. Yes.

Q. They were available for that purpose? A. Oh, yes.

Q. Those constituted 33 out of 120 cars that were taken back by the C. R. & L. Is that right? 1215
A. That is correct.

Q. So that there were 87 other cars? A. Yes, if your subtraction is right, yes, sir.

Q. And those other cars were not obsolete? A. No. Well, outside of the Birney cars. The Birney cars were obsolete. Seven Birneys, they were.

Q. Then there were eighty other cars that were being used right along and they were not obsolete? A. That is correct.

1216 Q. Are you familiar with the C. R. & L.'s operation in this territory since the time of your inspection? A. No, I am not.

Q. Did you know that they have now given up all trolley operation? A. I have heard it but I do not know it personally.

Q. Well, if it is true that all trolley operation has been abandoned by the C. R. & L. since the time of your inspection, would that change your opinion about the desirability or the propriety of replacing these 33 obsolete cars with 33 new cars? A. Well, I wouldn't know about that
1217 hardly without making a study of the thing. I never made a study on it from that angle.

Q. You made your inspection last March? A. That is correct.

Q. If you had been responsible for the operation of that property at that time, and if you had known at that time that trolley operations were to be abandoned entirely over the whole territory within about three months, would you have recommended replacing those 33 cars with new trolley cars?

Mr. Martin: I object to that. That is not
1218 proper cross-examination, and this witness has not been shown to have made any recommendation at all.

Hincks, *J.*: Sustained.

By Mr. Garfield:

Q. In stating it as your opinion that those 33 cars should have been replaced by new trolley cars last March, did you assume that trolley operations were going to continue indefinitely? A. I made no assumption with respect to that one way or the other.

Q. But you did not know that they were to 1219
be abandoned very soon? A. I had no information one way or the other with respect to that.

Q. Well, as a general proposition on your own line or any trolley line, if you knew that trolley operations were to be abandoned within three months, would you replace trolley cars even if you considered them to be obsolete? A. I certainly would not. I would be foolish.

Q. The seven Birney cars were bought about 1918 or 1919? A. 1919, Mr.——wait till I put my specks on. (Pause.) Some were bought in 1922, and some were bought in 1920. 1920 and 1220
1922.

Q. Well, those were bought, you say, to meet jitney competition? A. I would assume that they would. That was the purpose generally throughout the country.

Q. You are not critising the management for having bought them at that time? A. No, sir.

Q. Was that thought at that time to be a hopeful and effective way to meet jitney competition? A. I think it was.

Q. Did you do the same sort of thing on your line? A. No.

Q. Do you feel that it was a wise move to make 1221
in C. R. & L. territory? A. I do feel that it was a proper move to make at that time; but I don't think it should be continued forever.

Q. But at that time, in order to meet the jitney competition which was then coming in, you feel that it was a sensible thing to do? A. Oh, yes, I would think that was all right.

Q. The cars other than those that you have called obsolete as to which you claim a certain amount of depreciation, those cars were all in

1222 condition in which they were, and properly could be, operated, were they not? A. That is correct.

Q. If you had those 80 cars on your lines and knew that in three months you were going to abandon trolley operations, would you have spent the money that you have here listed as necessary to put them into what you call reasonable condition? A. It might be necessary to expend some of it. I certainly wouldn't expend all of it if I knew I was going to abandon in three months.

Q. Well, actually you would have spent very little of it? A. As little as I could.

1223 Q. You didn't make any estimate of how much that would be? A. No, oh, no.

Q. Your inspection, I think, must have been made in April instead of March. At any rate, these exhibits seem to have April dates on them. A. April is correct. I think I started in March and it extended into April.

Q. April 3, April 10, April 17, and April 17 are the dates on the four exhibits. A. Yes.

Q. Those are the correct dates? A. Those are the correct dates. That is the date, I think, of the report. The inspection was prior to the

1224 report and the date of the inspection of each car is indicated in the report.

Q. Then if the abandonment of the trolley operations took place on June 20, you were even closer than three months to it at the time you made the inspections? A. Yes, sir.

Q. And your willingness to spend money would have been even less if you had known they were going to abandon on that date?

Mr. Martin: I object to that question of willingness.

Hincks, *J.*: Sustained.

By Mr. Garfield: 1225

Q. What part of the year is hardest on trolley cars? A. Wintertime.

Q. The wear and tear is greater in the winter months, is it? A. Yes, sir.

Q. On account of snow and also on account of temperature? A. Snow and ice. Temperature has no effect on them.

Q. Then if a certain amount of wear and tear occurs on a trolley car throughout the 12 months of the year, you would say that the greater part of that would occur during the winter months? A. I think not the greater part would occur, but 1226
a major, a substantial part of it would occur. If it is new——

Q. Well, let us say, from the middle of November to the middle of April, five months. A. Yes.

Q. What proportion of the year's wear and tear would occur during those four months? A. Well, I would assume somewhere from 60 to 65%.

Q. Five-eighths or two-thirds of the total year's depreciation would be suffered in those five winter months? A. That is correct.

Q. These cars were all taken over by the 1227
C. R. & L. on November 16, 1936, were they not? A. I assume so. I don't know that.

Q. And your inspection was made five months later, roughly? A. Yes, sir. I have, however, made a general inspection of all of the cars of a year before, maybe not quite a year before.

Q. Was that in as much detail as the April inspection, April of this year? A. No, sir.

Q. Are the figures in these exhibits based on the inspection you made this year or a year

1228 earlier? A. On my later inspection, in March or April of this year.

Q. At that time there was 5/8 to 2/3 of a year's wear and tear on all of those cars more than there had been at the time the C. R. & L. took them back in the previous November, was there not? A. Say that again. I don't follow you.

Q. In April, 1937, five months after the C. R. & L. took the cars back, those being five winter months—— A. Yes.

Q. There was—in your words—60 to 65% of a year's wear and tear more in the condition of those cars than there was at the time they were
1229 taken back?

Mr. Martin: I object to that. The witness didn't say that. He said that in ordinary cars something more than the proportionate amount of depreciation would occur in the winter months rather than in the other months. We do not know what kind of a winter they had in 1936 to '37. They might have had so mild a winter that a good deal less depreciation took place then than in the summer.

1230 Mr. Garfield: It seems to me the question is a proper one. If Mr. Martin wants to qualify it on redirect, that is his privilege.

Hincks, J.: I think the facts are already in the record, Mr. Garfield.

Mr. Garfield: I won't press the question. (Pause.) That is all.

By Hincks, J.:

Q. I have one or two questions. In this report on the Bridgeport trolleys and possibly in the other reports, you spoke of breakdown cost of

trolley cars as distinguished from original cost. 1231
A. Yes, sir.

Q. What do you mean by the breakdown cost? A. What I mean by the breakdown cost is to segregate each item or each part which goes to make up a finished car and price it so that when you get the prices of all of the parts in a car it ought substantially to equal the original cost; and that is the only way you can get proper depreciation.

Q. This report also refers to present depreciated values as distinguished from obsolescence values? A. Correct.

Q. How would you define the difference in 1232
those two values? A. It is explained in the report, your Honor. My motion is that, generally speaking, obsolescence goes along with age. Depreciation, of course, is wear. Now assuming a car will run for thirty years and it cost $15,000, I assume that at the end of 15 years the car becomes about half obsolete, or in other words, the car would be worth—its obsolescence worth would be about $7,500. Obsolescence as applied to street cars goes with the change in the art and the industry as it does with everything else.

Q. What is the approximate life of a one truck 1233
or Birney trolley car? A. I assume that the life of a Birney car would be in the order of 12 to 15 years.

Q. What is the approximate life of a bus? A. Eight years. Eight years.

Q. Eight years? A. Yes, sir. You may get nine, but the last year it isn't much good to you. Eight years is a fair life for a bus, useful life.

Q. In order to figure a fair equivalent of equipment particularly depreciated, isn't it necessary to take into account both the amount of

1234 depreciation and the rate of depreciation applicable to that type of equipment? A. I think that is true, yes. Oh, yes. And depreciation is different entirely from obsolescence because a car well maintained, its parts kept up, its sides kept up, its seats kept up, a good roof, and so on, may be kept almost in its original value. As a matter of fact, street cars ought not to depreciate while they are in service much more than 25% or they may become unsafe. Certainly not over 30%. While obsolescence, on the other hand, goes along when changing of
1235 the art in the industry puts them out of business. Q. Are these companies with which you have been associated, any or all of them, in any respect associated or affiliated with Connecticut Railway & Lighting or United Gas Improvement Company? A. Our companies are owned by the United Gas Improvement Company.

Hinck, J.: I think that is all I have.

Mr. Garfield: May I ask one or two more questions.

By Mr. Garfield:

1236 Q. What is your policy as an operator of a trolley company with regard to the supply of trolley cars which you keep on hand? Perhaps I can explain that a little further. Do you have enough equipment to take care of the peak load at the morning and evening commuting hours on an ordinary day in the wintertime or some such standard as that? A. Yes. We not only have that, but the railway that is there to serve the public ought to be able to take care of circus days, big baseball games, have enough of spare equipment to handle all situations that arise. It just goes with the game.

Q. In order to have that spare equipment, do you go out to buy new trolley cars to use as spares? A. No, we don't do that. We buy new trolley cars just as we buy new buses. The cars then that are in service are put back to swing runs. Swing runs are put back to trippers, so it is the oldest cars. They are not usually thrown away. They are usually kept, just for these emergency purposes which you spoke about and which I pointed out in Bridgeport a few moments ago. 1237

Q. For those emergency purposes you wouldn't hesitate to use a car which in your original testimony you said would not attract new business, would you? A. Well, I wouldn't hesitate to use it if I had to but it isn't good. 1238

Q. If you had those cars you would certainly use them for the emergencies? A. If I had nothing else I could use instead.

Q. If you were going to abandon trolley operations in a few months, you wouldn't get new ones for emergency purposes?

Mr. Martin: I object to that. This man is an appraiser of cars. He is not a director of policy. 1239

Hincks, J.: Sustained.

By Mr. Garfield:

Q. How did you determine the original cost of these trolley cars that you inspected? A. From the original records. In nearly all instances from the original records of the Connecticut Company, and in some few instances I had to make my own estimates because there were no available records that I could find.

Q. But you used and you attempted to use original cost in every case rather than today's

1240 value or today's cost? A. Oh, yes, you have got to do that.

Q. You have got to do that in order to determine depreciation? A. Oh, yes.

Q. Now suppose the Connecticut Company, in buying those cars, had been able to get them at a substantial discount because of ordering a large number or because of buying through an associated company. That would have changed the figures in your exhibit, wouldn't it? A. No, not at all.

Q. The original cost of cars would have been different? A. No, the original cost of cars is
1241 what they are all at in my report.

Q. Where you have the original cost figures, but not where you have estimated? A. I think it is above 90%. The other figures wouldn't make any change at all in that respect.

Q. Do single truck cars require anything less in the way of track and road bed than modern double truck cars? A. No, a single truck car requires a better and smoother track and roadbed to operate than a double truck because of its oscillating propensities. In other words, it is harder to keep a single truck car on the track than it is
1242 to keep a double truck car on the track.

Q. You don't have to keep your track in quite as good condition with a double truck car as you do with a single truck car? A. That depends on speed, but ordinarily I would say you can get a double truck car over a piece of track that is bad safer than you can a single truck car going at the same speed.

Q. Safer and more comfortably to the passengers? A. A double truck oh, yes, sir.

Mr. Garfield: That is all.

(Witness excused.)

CLAUDE BRYAN, called as a witness on behalf of 1243
the Connecticut Railway & Lighting Company, being first duly sworn by Clerk Pickett, testified as follows:

By the Clerk:

Q. Your full name? A. Claude Bryan.

Q. Where do you live? Where do you reside? A. 811—Wilmington, Delaware.

DIRECT-EXAMINATION BY MR. MARTIN:

Q. What is your business, Mr. Bryan? A. Engi-
neer of Ways of the Delaware & Electric Power 1244
Company.

Q. Are you a civil engineer? A. Not a graduate, no, sir. A practical engineer.

Q. Do you work for the Delaware Electric Power Company? A. Yes, sir.

Q. Since how long have you worked for them? A. 19 years.

Q. What kind of business do they do? A. In the street railway and the bus business.

Q. In what department of their enterprise are you employed? A. The track department.

Q. The track department? A. Yes, sir. 1245

Q. Are you familiar with paving and purchasing rails, laying tracks and ties and switches? A. Yes, sir.

Q. Do you know the prices of materials and labor in that connection? A. Yes, sir.

Q. Did you make an inspection of all the track turned over to the C. R. & L. by the Connecticut Company November 16, 1936? A. Yes, sir.

Q. Did you make a report on that? A. Yes, sir.

Q. I show you this document entitled "Report on track and roadway of C. R. & L. Company"

1246 and ask you if you made that report? A. Yes, sir.

Q. I show you the claimant's Exhibit No. 12 and ask you to look on page—they are not numbered, are they? A. No.

Q. Will you look on the second page and see if that summary of track and roadway contained therein is a summary of the report that you made? A. It is.

Mr. Martin: I offer this report on track and roadway in evidence.

1247 (*C. R. & L. Exhibit 13*: Report on track and roadway.)

By Mr. Martin:

Q. Mr. Bryan, did you make the inspection of the tracks yourself? A. Yes, sir.

Q. And of the roadway alongside the track? A. Yes, sir.

Q. And on looking at your report or the summary which I have just shown you, can you tell me what, in your opinion, was the amount of money necessary at the time of your inspection to put that track in condition so that it would be rea-
1248 sonably safe to run cars over it? A. $308,495.52.

Hincks, *J.*: What page is the summary on?

Mr. Martin: I beg your pardon, sir. It is in this report. Reilly and Bryan are both in this little one here. There is the summary and there are the figures that he has just testified to.

By Mr. Martin:

Q. This inspection was made when, Mr. Bryan? A. (Pause.) I will have to open up my stuff. Witness refers to book.) March 17, 18, 19, 20.

Q. In 1937? A. Yes, sir. 1249

Q. This here. That is all. The items listed in your report are correct and reflect what you found and contain the estimates for repairs or replacements at the time the inspection was made, both with regard to the price of materials. Is that correct? A. Yes, sir.

Mr. Martin: That is all.

Mr. Garfield: Are you through, Mr. Martin?

Mr. Martin: Yes, I have finished.

CROSS-EXAMINATION BY MR. GARFIELD:

Q. How many miles of track did you inspect, 1250
Mr. Bryan? A. (Pause.) 72, 110, 116—about 130—126 miles.

Q. On page 1 of Exhibit 12—— A. I was just counting it up from page 6, on page 6. It is added here.

Q. On page 6, 129 miles? A. 129 miles. That included the car barns.

Q. Dividing that into 308 odd thousand dollars would be about $2,380 a mile, wouldn't it? A. Yes, about that.

Q. Which you said, or perhaps I should say, which Mr. Martin asked you to say, should be 1251
spent in order to put that track into reasonably safe condition to run cars over. It think I got his exact words. Is that what you intended to say? A. That is what he said.

Q. That is what he said and you said yes when he asked you that? A. Yes, but not a direct answer to his question. The track is not unsafe to operate cars on.

Q. In saying yes to his question you really gave a false impression, didn't you? A. I would say not.

1252 Q. You would like to have reframed the question for him? A. Probably.

Q. Then you would like to get back any impression, if you gave one, that the track was unsafe? A. Except in spots. Not all of it. Not all of that track that was reported on was unsafe but there was some spots that were.

Q. Unsafe? A. Unsafe, yes.

Q. Those spots were being operated? A. Oh, yes.

Q. Cars were being run over them every few minutes? A. I believe so; yes, sir.

1253 Q. Did you know trolley operations and properties in Connecticut are subject to the jurisdiction of any public body? A. Except from hearsay.

Q. Well, you know, as a matter of general knowledge, that all trolley operations are subject to some public utilities commission of some sort, don't you? A. That is in most of the states but not all of them.

Q. Do you doubt that that is so in Connecticut? A. Sir?

Q. Do you doubt that that is so in Connecticut? A. No, sir. I understand there is a com-

1254 mission.

Q. You are familiar with the general method of such commissions? A. Yes, sir.

Q. In supervising trolley properties? A. Yes, sir.

Q. Is it your experience that they permit properties to be continued to be operated if they are in unsafe condition? A. That is rather a broad question. It depends upon what you mean by an unsafe condition.

Q. Well, now, we are qualifying some more. What did you mean a minute ago when you said

that there were unsafe? A. Unsafe on account 1255
of the derailments, car derailments.

Q. The track was very rough, was in bad shape. Some was inspected that was in bad shape.

Q. Were there derailments in that territory? A. I don't know.

Q. You didn't hear of any, did you? A. No, sir.

Q. You didn't see any while you were inspecting? A. No, sir.

Q. Even on those unsafe portions of the track? A. Yes, sir.

1256

Q. You mean you did see some? A. No, sir.

Q. You didn't hear of any on those unsafe portions of the track? A. No, sir.

Q. In your capacity as engineer of ways of the Delaware Electric Power Company, do you have anything to do with advising your principals as to whether track should be repaired or improved? A. Oh, yes.

Q. They consult you as to what should be done if anything to the various portions of the track? A. Yes.

Q. So that you have a part, at least an advisory part, in determining the policy with regard to the 1257
maintenance of the track? A. Yes, sir.

Q. If you were going to abandon a particular line of trolley track within three months, and if you found it in the condition in which any of these C. R. & L. pieces of track were at the time of your inspection, would you advise your superiors to spend the amount of money that you have shown in your exhibit to repair it? A. No, sir.

Q. In other words, none of those pieces was so bad that you couldn't have operated over it safely for three more months? A. No, sir.

1258 By Mr. Martin:

Q. What was the answer to that? Yes or no? A. No, sir.

Q. What does that mean, that he is right or wrong? A. They were perfectly safe to operate for a three months' period, any of them.

Mr. Martin: I see.

Mr. Garfield: That is all.

Hincks, *J.*: Anything more, Mr. Martin?

By Mr. Wells:

Q. Is your company connected with the U. G. I.?

1259 A. What?

Q. Is your company connected with the U. G. I.? A. Yes.

Q. It is owned by the U. G. I. A. I don't know that it is owned, but it is in connection with the U. G. I.

Redirect-examination by Mr. Martin:

Q. Just a minute. How do you know it is connected with the U. G. I.? A. Through hearsay.

Q. Is that the only way you know? A. Yes, sir.

1260 Q. Do you know who owns stock in your company? A. No, sir.

Q. I thought so. Do you know any of the stockholders? A. No, sir.

Q. Do you know the names of any of the directors? A. No, sir.

Q. Just sit there. A. Oh.

Q. Now I want to find out about this report that you made, on what basis it was made. I was under the impression, that is, that this cost $308,495.52, was the amount it was going to cost

to put the track in reasonably safe operating con- 1261
dition. It may be that I am mistaken about that. What kind of condition is it that it would have cost that amount of money to put this track in? A. To put it in first class operating condition, renewing certain parts that were worn out.

Q. I see. And if you were in a position to have the discretion to say what should be spent on the track and roadway and when and how much, and you assumed that those tracks were to be there for one hundred years, how much money would you have felt was necessary to spend on that track at the time you made the inspection? A. $307,000. 1262
$308,000.

Q. Were there parts of the track that you could have overlooked for five years and not made any expenditure on? A. I would spread that over a period of probably two or three years. I wouldn't do it all in one year. Not over three years. The first and second year.

Q. But in the course of two or three years at the outside, it would be necessary, in your opinion, to spend this amount of money, $308,495.52 on the track and roadway. Is that right? A. Yes, sir.

Q. You couldn't have put it off for more than 1263
three years? A. No, sir.

Q. If you had put it off for more than three years, would it have been reasonably safe for operating purposes? A. No, sir.

Mr. Martin: That is all.

RECROSS-EXAMINATION BY MR. GARFIELD:

Q. The Delaware Electric Power Company that you work for is the same Delaware Electric

1264 Power Company that Mr. Reilly worked for, isn't it? A. Yes, sir.

Mr. Garfield: That is all.

Hincks, *J.*: Shall we take a recess here, Mr. Martin?

Mr. Martin: Yes, sir. I forgot to offer in evidence one of Mr. Reilly's reports which I now offer in evidence, being the calculation of the amount of the equipment claim of C. R. & L. You have a copy of that.

Hincks, *J.*: Let it be marked subject to cross-examination.

1265 Clerk Pickett: 14.

(*C. R. & L. Exhibit 14:* Calculation of equipment claimed.)

Hincks, *J.*: Counsel can decide during recess whether they want to ask him any questions.

Mr. Martin: They have had it for a week.

Mr. Garfield: We may want to cross examine him on it.

Mr. Martin: I think they were using it on cross examination. I saw Mr. Wells looking at it when Mr. Reilly was on the stand, but I 1266 wanted to offer it in evidence.

Mr. Garfield: Mr. Martin, I would like to ask a question or two on this Exhibit 12 before you put on your next witness.

PATRICK T. REILLY, a witness on behalf of Connecticut Railway & Lighting Company, resumed the stand and testified as follows:

CROSS-EXAMINATION (CONTINUED) BY MR. GARFIELD:

Q. Mr. Reilly, in Exhibit 14, which is the calculation of the equipment claim of the Connecti-

cut Railway & Lighting Company, you have in- 1267
cluded figures from your previous exhibits dealing with the specific trolley cars, and you have also included a good many other figures that are not to be found in the earlier exhibits, have you not? A. No. Everything is to be found in the earlier, and it appears in these figures, excepting that some that appear in the earlier exhibits are shown by depreciation and in this exhibit they are shown by money.

Q. Take car No. 3130. A. 3130, yes, sir.

Q. I find in your Bridgeport exhibit, which is No. 8, I think—— A. Yes, sir. 1268

Q.——the item of $8.50 for scraping and painting the roof, but I don't find the other three items. A. You will find that overhauling the seat mechanism. You will find the seat mechanism is depreciated 50%, I think, and gongs some to the per cent 70%, and the axles depreciated 80 or 90%, and so far as these three items are concerned, they ought to be renewed because of excess of depreciation of these particular items.

Q. If those three items were renewed at the costs which you show there, they would be as good as new and without any depreciation on them. A. The axles would. The gongs is only 1269
an overhauling job, picking up the clappers and things of that sort, and the overhauling of the seat mechanism is simply to take the seat out of the car, take it into the position—take the old rivets out that are loose and wobbly and put a new seat frame in.

Q. To the extent that the figures in Exhibit 14 represent depreciation rather than deferred maintenance, if those amounts were spent you would put the property in new condition rather

than in depreciated condition, wouldn't you? A. Not new, not at all.

Q. On the axles you would? A. The axles, yes, yes. But I think that is about all that applies.

Q. I would like to ask you again as manager of the Delaware Electric Power Company and of these two bus companies, don't you have a voice in determining the policies of those companies, in determining the policies in connection with their equipment? A. You bet I do, yes, sir.

Q. If you knew you were going to abandon Car 3130, if it belonged to you, in three months, would you spend any of those four amounts to show there on it? A. I am inclined to think from what I saw of those axles—I would be inclined to renew the axles. I was a little afraid of them.

Q. You think those axles wouldn't have run three months? A. They were down pretty well to the edges. I was afraid of them. I would be afraid of them as an operating man. The other three items I wouldn't.

Q. As a general proposition, the total amount that you have shown here of $43,000 or, as Mr. Martin prefers to put it, 38 thousand odd——. A. Yes, sir.

Q. How much of that would you have spent if you had known that these cars were all to be abandoned within three months? A. Well, any figure I would give you on that would be a guess.

Q. It would certainly be a very small part? A. But I wouldn't spend any more that I had to. That is about all I could say. That I felt ought to be spent to keep the cars in safe operating condition.

Q. How long did you take to inspect these cars? 1273
A. Oh, I think I was at it nearly three weeks, maybe a little better. It was a long time.

Mr. Garfield: That is all. Thank you very much for coming back.

(Witness excused.)

D. Ernest Frame, called as a witness on behalf of the Connecticut Railway and Lighting Company, being first duly sworn by Clerk Pickett, testified as follows:

1274

By the Clerk:

Q. Your full name? A. D. Ernest Frame.
Q. Where do you reside? A. Wilmington, Delaware.

Direct-examination by Mr. Martin:

Q. Where do you live? A. Wilmington, Delaware.
Q. You are working for the Delaware Electric Power Company? A. Yes, sir.
Q. That is the same office Mr. Reilly works in? 1275
A. No, sir.
Q. It is the same company that he works for?
A. Yes, sir.
Q. How long have you worked for them?
A. 14 years.
Q. What did you do before you worked for them? A. I was thirteen years with Philadelphia Rapid Transit Company in Philadelphia.
Q. What were you doing in those thirteen years? A. Repairman and a district superintendent of equipment.

1276 Q. What department of the Delaware Electric Company do you work in? A. In the mechanical division.

Q. Did you make an inspection of the materials and supplies for buses and trollies which were turned over to the C. R. & L. on November 16, 1916? A. I did.

Q. And in connection with your regular work you have occasion to buy materials and supplies? A. No, I only set the minimum and maximum amount of material that is to be carried by our storekeepers.

1277 Q. Are you familiar with the values of materials and supplies in 1936 and 1937? A. I am.

Q. Are you familiar with the amount of material and supplies other than the tools, garage equipment or spare units, which are required for a given amount of transportation, whether or buses or trolleys? A. I am.

Q. I show you this document and ask you if that is a report which you wrote up? A. It is.

Q. Is that a report which you wrote up with regard to the inspection of the materials and supplies of C. R. & L., which were turned over
1278 to them that I spoke of? A. It is.

Q. What does that report indicate? A. This report indicates the minimum amount of material that should have been received to safeguard—or to operate over a period of time until such other material—until such a time as that material is used and other material was brought to replace it.

Q. Is this a list of all the material that should have been on hand, or is this a list of the material which should have been on hand and was not on hand? A. This only shows a list

of the minimum amount of material that should 1279
have been on hand.

Q. Should have been on hand? A. Should have been on hand.

Q. Can you look at this list and tell us which of these items actually were on hand at the time? A. No. Not were on hand. This list only shows the amount that should be on hand, in other words, one, three, or four, whatever the item, the quantity there it calls for.

Q. Now, Mr. Frame, the first item is 2993 jaw brake beam for slack adjuster. Was that on hand? A. No, that should have been on hand.

Q. Was the next item on hand? A. No. 1280
Should have been. None of these items were on hand whatsoever. These were items that should have been on hand in emergency cases or in cases to properly operate your cars—properly operate this number of cars until such a time as the stock was replenished and built up to a maximum again. This was a minimum amount.

Q. None of the items listed in the list were on hand? A. None whatsoever.

Mr. Martin: I offer that list of items containing quantities and prices in evidence. 1281

(C. R. & L.)

(Exhibit 15: List of items prepared by Mr. Frame.)

Q. Have you a copy of that letter? A. Yes.

Q. Can you give us a breakdown of that report showing in what territories of the C. R. & L. these shortages occurred and what the value of these shortages in dollars was? A. Sheets from 1 to 8 inclusive state inventory of the Bridgeport Railway Company—a total amount of

1282 $2,982.39. And sheets from 9 to 14 was the Waterbury Railway, a total of $1,814.26. Sheet 15 is Bridgeport Bus, a total of $198.03. Sheet 16 and 17 inclusive is Waterbury Bus, a total of $349.73, or a grand total of $5,344.41.

Q. When you say Bridgeport Railway you mean the C. R. & L. property in the Bridgeport territory? A. That is it.

Q. And the same way with the Waterbury territory? A. Yes.

Q. I don't see any item here for New Britain or Derby. Why is that? A. It is my understanding that the Bridgeport car property, that
1283 the stock for the Bridgeport cars—for the Derby cars—was drawn from Bridgeport, and the stock for the——

Q. New Britain? A. New Britain cars was drawn from Waterbury. So, therefore, in this inventory, we took—I took into consideration the amount of trucks, motor, etc., in these locations, and tabulated my total from that, not taking into consideration any material, but in the other two storages.

Q. So that the equipment at Norwalk, New Britain and Derby is included as the base which
1284 has to be on hand for service, as shown by these items which are contained in your report. A. That is correct.

Q. And you say that these materials and supplies do not include tools, garage, equipment, or spare units, but only the materials and supplies listed? A. That is correct.

Mr. Martin: Thank you.

CROSS-EXAMINATION BY MR. GARFIELD:

Q. Mr. Frame, on what basis did you determine how much should be on hand? Is there any stand-

ard rule for that or is it just your opinion? A. 1285
Well, it is my opinion.

Q. When did you make your inspection? A. In the latter part of June, or latter part of May or early part of June.

Q. About a month ago, in other words? A. That is correct.

Q. Do you know when the trolley operation was abandoned by the C. R. & L.? A. I do not.

Q. Had any of it been abandoned at the places you inspected at the time you made your inspection? A. Not of my knowledge. I didn't make any inquiries. I just was on the one particular 1286
job.

Q. Was it a part of your job to determine how much supply of materials to have on hand at the Delaware Electric Power Company? A. Yes. The minimum and maximum amount of material to be carried in stores.

Q. So that you determine the policy of that company in that respect? A. That is right.

Mr. Martin: Excuse me. I object to that characterization of the witness' job. I don't think he determines policy.

Mr. Garfield: He said he did. I don't know 1287
whether he or you know about it.

Mr. Martin: I think that I do and I don't think you ought to ask him a question that calls for a conclusion without supplying him the facts that call for that conclusion. I object to that question and move to have it struck out.

Hincks, *J.*: The fact that he determines the maximum and minimum carried by those companies will remain in the record and from that fact I will form my own conclusion. The motion to strike out is granted.

1288 By Mr. Garfield:

Q. Mr. Frame, if you had been charged with the duty of determining the maximum and minimum materials and supplies to be carried by the C. R. & L. in connection with its trolley properties in Bridgeport and Waterbury on June 1, 1937, and if you knew that those trolleys were all going to be abandoned on June 20, 1937, would you have felt that the amount of materials and supplies shown in your Exhibit 15 was required?

Mr. Martin: I object to that question. The feelings of the witness in regard to that
1289 matter are not important and he is not required to pass on a question of company policy, which is what is involved in that question. He is merely qualified to give advice or make reports as to what equipment is needed at that particular time.

Hincks, *J.*: I do not know that I fully understand what you have in mind in this question and several similar questions.

Mr. Garfield: I would be delighted to explain, your Honor. These gentlemen have given us their opinions as experts.

1290 Hincks, *J.*: Let me state the somewhat vacant state of my mind in this way. Perhaps you can supply the deficiency. What difference does it make for present purposes whether or not C. R. & L. at any given time after it repossessed, decided to substitute bus for trolley operation and subsequently put that decision into effect?

Mr. Garfield: It makes this difference, your Honor. If the obligation of the Connecticut Company was to turn certain property back to the C. R. & L. or obligation of the

New Haven—I fall into error now and 1291
then—the amount of that property so to be turned back would depend upon circumstances. Obviously, if 100 trolley cars were necessary to serve a certain territory, 100 trolley cars should be turned back. If only 50 trolley cars were necessary, there would be no obligation to turn back 100. The amount and the condition of the property which had to be turned back, assuming that there was an obligation on either company to turn it back, depended on all the circumstances, and obviously one of the circumstances was that the 1292
trolley property was all going to be abandoned in a very short time. There would be no obligation to turn back property on the assumption which Mr. Martin made a few minutes ago that trolleys were going to be operated for 100 years, when, in fact, everybody knew they were going to be operated for six months.

We had to turn back, if we had any obligations, enough to operate the property reasonably and safely until the time when it was expected to be abandoned, but I do not see how anyone can say we had to turn back 1293
enough to operate it in some way that it was not going to be operated. Supposing the trolleys were all to be abandoned the day before we turned it back. We wouldn't have to turn back the trolley properties.

Hincks, *J.*: I do not understand Mr. Martin claims there was any obligation to turn back to the C. R. & L. enough material to operate the trolleys throughout the entire duration of the lease. The claim, as I understand it, is rather that C. R. & L. was entitled

1294 to enough material to constitute, as it were, a revolving fund to keep the cars in motion as they might require current repairs. Isn't that substantially it?

Mr. Martin: Yes, sir, that is it exactly, to maintain the service.

Hincks, *J.*: That being the limit of his claim, how is it important whether or not the company planned to substitute busses or did, in fact, substitute busses?

Mr. Garfield: Because that revolving fund, when you come to items like these materials and supplies which are used up, would not 1295 have to be as large to carry through six months as it would through one hundred years. There would be no sense in turning back to them a whole lot of trolley materials which they could not possibly use in six months if it was known they were to give up trolleys in six months. That would be just a waste.

Hincks, *J.*: There is no testimony yet, is there, with respect to Exhibit 15, that the supplies listed therein were sufficient in quantity to last over six months?

1296 Mr. Garfield: There is no testimony as to what period they would last, and that is what I am trying to test out. Mr. Martin is proceeding on the assumption that this should be a fully equipped property ready to go on indefinitely as a trolley property. I am trying to show that it is a fully equipped trolley property under the circumstances if it is ready to go on for six months as a trolley property.

Hincks, *J.*: I think you are entitled to bring out, if you want to, how long a period the

supplies listed in Exhibit 15 might reasonably be expected to last, assuming that trolley operations were continued. Is that the purpose of the pending question? 1297

Mr. Garfield: Yes, your Honor. I had approached it from the other side, but that would accomplish the same purpose.

(The reporter read as follows:)

"Q. Mr. Frame, if you had been charged with the duty of determining the maximum and minimum materials and supplies to be carried by the C. R. & L. in connection with its trolley properties in Bridgeport and Waterbury on June 1, 1937, and if you knew that those trolleys were all going to be abandoned on June 20, 1937, would you have felt that the amount of materials and supplies shown in your Exhibit 15 was required?" 1298

Hincks, *J.*: You consider that as the equivalent of asking him whether these supplies would last longer than twenty days. Isn't that the substance of your question?

Mr. Garfield: I would be glad to ask the question in either or in both forms, your Honor. It seems to me it is relevant both ways. 1299

Hincks, *J.*: What significance has this June 1st date?

Mr. Garfield: That is the approximate date of his inspection when he determined that these things were lacking. My question is intended to bring out that if he had known they were going to operate for about three weeks more he might have determined that some different amount was required other than this amount.

1300 Hincks, *J.*: Very well, I will admit the question. Do you remember the question now, Mr. Frame?

The Witness: No, I would rather hear the question again.

(The Reporter read as follows:)

"Q. Mr. Frame, if you had been charged with the duty of determining the maximum and minimum materials and supplies to be carried by the C. R. & L. in connection with its trolley properties in Bridgeport and Waterbury on June 1, 1937, and if you knew that those trolleys were all going 1301 to be abandoned on June 20, 1937, would you have felt that the amount of materials and supplies shown in your Exhibit 15 was required?" A. Oh, I would say absolutely no, if I knew the railway was going to be abandoned.

By Mr. Garfield:

Q. Is it not true that in your Exhibit 15, out of the total of $5,344 shown there, all but a little over $500 of it relates to trolley property? A. Relates to trolley cars, yes. $4,796.65 is railway supplies.

1302 Q. And only about $547 is bus supplies? A. That is correct.

Q. Do you know what was actually turned over by the Connecticut Company to the C. R. & L. in the way of materials and supplies of the sort you have listed here on November 16, 1936? A. That is where I—while this inspection was made in June, that is where I based from the inventory that the Connecticut Company turned over to the C. R. & L. of their material, that is where we based their minimum amount of material from,

from that inventory and not from present day 1303
when this report was made.

Q. I don't think I quite follow that answer. You mean that this report in any way shows what was turned over in November? A. No. The material—the store of material was turned over by the Connecticut Company to the C. R. & L. was turned over in inventory form, showing the amount of each and every article that was received, and the cost of it, and from that sheet was where we—where I took the minimum amount of material that should be on hand or should have been received to operate that company for a sixty 1304
day minimum.

Q. Well, take this first item.

By Hincks, *J.*:

Q. Can I interpose to try and clear this up in my mind by asking this question? If you should add the items listed on Exhibit 15 to the inventory sheet of supplies turned over to C. R. & L. in November, 1936, would you then have a fund of supplies which would have been adequate for approximately sixty days and no longer? A. Your Honor, no. This, whatever was turned over,—we will take for instance the first item, 1305
which is the slack adjusting jaw. And if there were two in stores turned over to the Connecticut Company at that date, I add one more to it to make three, for a safe margin of sixty days.

Q. That was my question. If you add the items on this exhibit to the items that were included in the inventory, which was turned over, the sum of those two documents would create a store sufficient to serve for sixty days? A. A minimum store. That is correct. Yes, sir, that is correct.

1306 By Mr. Garfield:

Q. Take that first item. You claim that one more should have been turned over than was? A. That is correct.

Q. Do you know how many were turned over? A. No, I don't have that inventory.

Q. You did have the inventory? A. I did have the inventory at that time.

Mr. Garfield: That is all.

By Hincks, *J.*:

Q. Did you testify that in your opinion a company having operations of the size and char-
1307 acter of the operations of Connecticut Railway and Lighting in November, 1936, ought to have a current fund of supplies sufficient to last for sixty days? A. That is correct, yes. From the time—due to the fact that in sixty days you must take into consideration that it takes approximately thirty-five to forty days to get material in from the time that you order it.

Mr. Martin: That is all.

(Witness excused.)

JOHN D. ANDERSON, called as a witness on
1308 behalf of Connecticut Railway & Lighting Company, being first duly sworn by Clerk Pickett, testified as follows:

By the Clerk:

Q. Your full name? A. John D. Anderson.

Q. Where do you live? A. Merion, Pennsylvania.

DIRECT-EXAMINATION by Mr. Martin:

Q. Where is the ribbon copy of your report? A. Beg pardon?

Q. Where is the ribbon copy of your report? 1309
Have you got it in there? A. What do you mean by the ribbon copy?

Q. These are both carbons. That is a carbon. Haven't you a ribbon copy? A. No, I don't think we have.

Q. Do you know what became of the ribbon copy? A. You have it?

Q. I haven't it. I have copy number 4 and number 8. A. No, I don't have that.

Q. That is all right. You have a copy of this, haven't you? A. Yes, I have a copy.

Q. Mr. Anderson, what company do you work 1310
for? A. United Engineers and Constructors, Inc.

Q. Are you a civil engineer? A. Yes, sir.

Q. Did you graduate from Cornell? A. I did.

Q. Have you got a degree? A. I have.

Q. What is it? A. Civil Engineer.

Q. Are you a registered professional engineer in New York and Pennsylvania? A. I am.

Q. Are you familiar with the construction of buildings? A. I am.

Q. And have you bought and sold building material? A. Yes, sir.

Q. You are familiar with the prices of build- 1311
ing material? A. Yes, sir.

Q. And also with the prices of labor? A. Yes, sir.

Q. And you are familiar with the engineering requirements of buildings for various uses? A. Yes, sir.

Q. On November 16, 1936, certain real property was turned back to C. R. & L. and you made an inspection of the buildings on that land, did you? A. Yes, I inspected certain buildings in Norwalk, Bridgeport, Derby, Waterbury, and New Britain.

1312 Q. Did you make a report on that inspection? A. I did.

Q. I show you this document and ask you if that is a copy of your report? A. Yes, sir, that is.

Q. Does that report contain details of the repairs which are necessary to the buildings? A. It does.

Q. Does it contain an estimate of the cost of making these repairs? A. It does.

Q. Can you tell us the general principle that you went on in deciding whether or not the repairs which are indicated as necessary to make
1313 in this report had to be made? A. We made detailed physical examination of each of the properties designated. We took detailed field notes regarding those properties in their individual parts, prepared estimates of costs to make the necessary repairs to put them into reasonably good condition, and the estimates contained in that report are the amounts that are necessary to do that.

Mr. Martin: I offer the report in evidence.

1314 (*C. R. & L. Exhibit 16:* Report on repairs to buildings.)

Q. The repairs which you prescribed, were they necessary to put the buildings in first class condition? A. No, sir, just in reasonably good condition.

Q. What do you mean by reasonably good condition? A. Satisfactorily adequate for the needs of the business as of that time.

Q. For the uses to which they were going to be put? A. For the uses to which they were going to be put.

Q. Did you include any ordinary maintenance charges in making these estimates? A. I did not. 1315

Q. The estimates merely represent the costs of making up, if I may say, deferred maintenance existing at the time you made the inspection? A. Yes, sir.

Q. When did you make the inspection? A. Between the dates of March 10 and March 20, 1937.

Q. Can you tell us the total cost of the work and material necessary to put the buildings into reasonable repair and condition, based on prices of labor and materials, in the winter of 1936 to 1937? A. Yes, sir. $95,481.78. 1316

Cross-examination by Mr. Garfield:

Q. Mr. Anderson, were any of these buildings in dangerous condition? A. No, sir.

Q. Were any of them in such condition that they could not have been used without repairs for a year or so? A. There were parts of those buildings that in my opinion could have been used for that length of time without repairs.

Q. Were there any of them that could not have been used for three months in the springtime? A. I wouldn't say so. 1317

Q. Do you know anything about the age or ages of those buildings? A. I beg pardon?

Q. Do you know anything about the ages of those buildings? A. We made general inquiries regarding that. I know some of them. I have information regarding it, at least.

Q. Will you turn to page 3 of your Exhibit 16? A. Page 3 of the letter?

Q. Of the letter. That lists all the buildings on that page? A. Yes.

1818 Q. Do you know when the Norwalk car barn was built? A. No, sir, I do not.

Q. Do you know about how old it was? A. I have only general information about that. I would say it was at least thirty years old.

Q. So that it was, in your judgment, built not later than 1907? A. I should say so.

Q. But you don't know whether it was earlier than that? A. I don't know.

Q. Do you know about the Bridgeport car barn, office and shop? A. I believe that was built approximately 1925 or '26.

1819 Q. Do you know about Derby carbarn number 1 and office? A. No, sir, I do not.

Q. Or Derby car barn number 2? A. No.

Q. Derby car barn number 3? A. Derby carbarn number 3 was built, I think, approximately ten years ago.

Q. About 1926? A. Yes.

Q. Derby storehouse and trolley express building? A. I don't know when that was built.

Q. Waterbury office building? A. Approximately 1925.

Q. Waterbury main car barn? A. Well, I would have to quote from memory on that, Mr. Garfield.

1820 It was approximately ten or twelve years old, I believe.

Q. Waterbury Paint Shop? A. I don't know the date on that.

Q. Waterbury Repair Shop? A. Or on that.

Q. Waterbury Express Building? A. I don't know the date on that.

Q. New Britain repair shop and garage? A. I don't know the dates.

Q. You don't know the dates on most of these buildings, do you? A. That is correct.

Q. Was it necessary, for making an intelligent 1321
study of depreciation of these buildings, to know how old they were? A. I did not make a study of depreciation, Mr. Garfield; I made a study of deferred maintenance.

Q. If the amounts that you suggest as necessary to overcome the deferred maintenance had been spent, what would that have left in the matter of depreciation condition of those buildings? A. Well, that would have been subject to the normal depreciation of buildings of that type.

Q. Do you know what their depreciation percentage would have been after making up what you have called deferred maintenance? A. No, 1322
I didn't attempt to do that.

Q. I am wondering how you can fairly judge deferred maintenance if you don't know anything about what the depreciation condition that you are aiming at would be? A. Well, because you can differentiate between maintenance and depreciation on the basis of maintenance being the ordinary repairs made from year to year on buildings of this type.

Q. You know the normal life of buildings of this type, don't you? A. In general.

Q. Then you ought to be able to tell us, I should 1323
think, about how much depreciated each one of them would have been if it had been put back in the condition that these expenditures would have put it. A. Well, except that my study was made, as I say, to determine deferred maintenance. Now in determining that, I did not look at the structure as a whole, necessarily. We took individual parts, a window, a sash, broken pane of glass, a door that had a broken frame on it or hinges, broken floors. Individual items of that type.

1324 Q. In a sense they are more detailed criticisms than the conditions of the buildings? A. Exactly.

Q. Rather than any general comments on their general conditions? A. That is right.

Q. You are not criticising the general condition in which those buildings were? A. No.

Mr. Garfield: That is all.

Mr. Martin: That is all.

(Witness excused.)

1325 R. W. Wilbraham, called as a witness on behalf of Connecticut Railway and Lighting Company, being first duly sworn by Clerk Pickett, testified as follows:

By the Clerk:

Q. Your full name? A. R. W. Wilbraham.

Q. Where do you live? A. Rutledge, Pennsylvania.

Hincks, *J.*: Be seated, Mr. Wilbraham.

Direct-examination by Mr. Martin:

1326 Q. Mr. Wilbraham, you are the chief electrical engineer of United Engineers and Constructors, Inc.? A. That is right.

Q. You have an engineer's degree from the University of Pennsylvania? A. Right.

Q. Are you familiar with electrical equipment and construction? A. I am.

Q. And with overhead trolley systems? A. That is right.

Q. And the wires. Did you make an inspection during the winter of 1936 to 1937, of the

overhead trolley system of the C. R. & L.? A. I 1327
made an inspection in the spring, in April of this year.

Q. You inspected the poles, the span wires, and the trolley wires? A. That's right.

Q. And any other supporting structures? A. Any other overhead supporting structures.

Q. Did you make a report on that? A. I did.

Q. I show you this document and ask you if that is the report that you made? A. That is it.

Q. Now there are certain estimates in that report, and I ask you if you remember what they are based on. The estimates that I refer 1328
to are the estimates for deferred maintenance. A. The estimates are based on maintaining the overhead structure in a condition of 50% of new, which is considered a proper and reasonable figure for a going property of that kind.

Q. That is, the estimate of $18,878 which is contained in your report, is your estimate of the amount of money which it would cost in the year 1937 to bring the overhead trolley feeder system of the C. R. & L. trolley system up to and over all of 50% depreciated system. A. That is the overhead trolley system exclusive of what is known as the feeders, properly. The overhead 1329
trolley system exclusive of what is known as the feeders. The trolley contact wire, if you are thinking of that, that is included in here.

Q. That is also included in this $18,000 estimate? A. I just defined that carefully so as to avoid confusion further on.

Hincks, *J.*: Were you going to offer the report, Mr. Martin?

Mr. Martin: Yes, sir. I am looking for the ribbon copy.

1330 The Witness: Here it is, Mr. Martin. That is the original.

Mr. Martin: Is it signed?

The Witness: It is signed, yes.

Mr. Martin: I offer the report in evidence.

(*C. R. & L. Exhibit 17:* Report on poles and wires.)

By Mr. Martin:

Q. In your opinion is a condition of 50% depreciation safe to run an overhead trolley system on? A. Yes.

1331 Q. In your opinion that represents a degree of maintenance that is reasonable? A. Satisfactory.

Q. It will furnish service and it is safe? Is that correct? A. Right.

Q. Did you also, during the winter of 1936 to '37, make an inspection of the situation with regard to the supply of power to operate the C. R. & L. trolley properties? A. I did, together with several assistants.

Q. What did you find in general with regard to that? A. You are inquiring about power generation?

1332 Q. Yes, power generation and power feeding systems. A. We were asked—the scope of the work and the report we were asked to make was to determine the depreciation and present value of the trolley feeder system, had they been continued in service, properly maintained and reasonably developed in accordance with the development of the art.

Q. Did you find trolley generating and power feeding systems in operation? A. No.

Q. No? None. A. None. Pardon me. We were specifically asked to do only and consider only that

part having to do only with Bridgeport and 1333
Shelton—Derby. No examination was made specifically of the rest of the property.

Q. You had only Bridgeport, what, and Derby? A. Bridgeport and Shelton-Derby area where there had been generating stations. We were specifically asked to determine the present value if they had been maintained in service.

Q. After your inspection did you make a report with regard to this? A. Yes.

Q. Is this a copy of that report? A. That is right. That is a copy.

Mr. Martin: I offer it in evidence. 1334

(*C. R. & L. Exhibit 18:* Report on generating stations.)

Q. Mr. Wilbraham, you say you found no power generating and power feeding systems in the Bridgeport and Derby areas? A. We had trolley feeder systems, but there was no generating equipment.

Q. The trolley feeder system is the system which carries the current from the point of origin to the point of—— A. Power house.

Q. ——function. Is that right? There was that system which was merely a transportation 1335
system. A. There is a feeder system in existence today that is suitable for the present method of operation, but when you consider a generating system you have some changes in a feeder system naturally.

Q. And you found no power generating system at all? A. None.

Q. How did the C. R. & L. get its power? A. By purchases.

Q. From whom? A. I am told from the New Haven Railroad.

1336 Q. Do you know when the Connecticut Company ceased to make its own power at Derby? A. I was informed that that was in 1921.

Q. And do you know when it ceased to do that at Bridgeport? A. 1927.

Q. Then after that how did the Connecticut Company get its power? A. Purchased it.

Q. From the New Haven Railroad? A. From the New Haven Railroad.

Q. Do you know whether in 1921 and 1927 the original power houses were abandoned? A. I am told that they were.

1337 Q. At least did you inspect them? A. I did not.

Q. You didn't look at them yourself? A. I did not look at them myself. That was done by assistants.

Q. You don't know what they are used for now? A. I do not.

Q. In making your estimate of power generating and trolley feeder systems, what basis did you go on? A. First of all, we recreated a power house at Bridgeport that would seem to be a proper plant to reconstruct, and we likewise reconstructed the power plant at Derby,

1338 as of the dates of 1921 and 1927.

Q. Those, you say, were the two places where originally there were power generating plants? A. That is right.

Q. On what basis did you theoretically reconstruct these power plants? A. We reconstructed Bridgeport on the basis of a steam generating station and steam turbines and stoker fired boilers, and the Derby station, on the basis of Diesel engines.

Q. Why did you make that distinction? A. Coal cost would be too high at Derby and

being a smaller station, it would be more economically operated and cheaper all around than a steam station. 1339

Q. Whereas a steam station would have been economical in Bridgeport? A. Yes. You can get water bourn coal for less money than you can get coal in Derby. It is a larger station, too.

Q. Did you estimate the total replacement cost of these theoretically lower generating plants that were to be constructed? A. That is right.

Q. In arriving at your figures in regard to the amount of the claim of C. R. & L. for trolley generating and power feeder systems, did you make any discount for depreciation of machinery? 1340 A. We did.

Q. What was that discount? A. For the power plant, reconstructed power plant at Sea View.

Q. Wait a minute. Where? A. The power plant that would be in Bridgeport is at a place called Sea View, commonly known in the past and even now as Sea View. The structure—well, the entire plant there was taken as 40%, and the one in Shelton as 60% depreciation. If maintained at a proper condition of repairs today, it would be depreciated 60% at Shelton 1341 and 40% at Bridgeport or Sea View.

Q. Will you tell me that again, those two depreciations? A. After reproducing these plants new and considering what amount they would have depreciated to date if they had been properly maintained and the various parts replaced and modernized, as found necessary, reasonably so, the Bridgeport plant at Sea View would have been depreciated 40% and the Derby plant would have depreciated 60%.

1342 Q. That is, if I understand you rightly, you took the replacement cost today of these two power generating plants, figured out what it was in the case of the Derby plant and what that amount would be in the case of the Bridgeport plant, and then in the case of the Derby plant you depreciated that replacement cost 60%, did you say? A. That is right, so you would have 40% of its original value left today.

Q. So that as far as the Derby plant goes, your estimate of the claim that C. R. & L. should make an account of the Derby plant is only 40%
1343 of the replacement cost of such a plant. Is that correct? A. Right.

Q. And in the case of the Bridgeport plant, your estimate is how much? 60? A. 40% depreciation or 60% of its value.

Q. 60% of the value of the replacement today? A. Correct.

Q. Your thought being that it is reasonable to suppose that if those plants had been operating during the previous decade or longer, that that would have been a reasonably depreciated condition to have found them in in 1937? A. That is right.

1344

By Hincks, *J.*:

Q. Do you apply the same rates of depreciation to structures and equipment? A. No. Well, you see the Sea View power plant, you have got your structures and equipment as 40%, and your Derby is 60. Your overhead distribution system is 50%. That is the outside part, your Honor, but the inside portion is alike. That is, everything in the Sea View plant would be the same depreciation. That is, 40 in everything, and your Derby plant would be 60.

By Mr. Martin: 1345

Q. What is the total replacement cost of the two power generating plants and trolley feeder systems as of this setup? A. $1,208,000 as of November 16, 1936.

Mr. Martin: Did you get that, Mr. Stenographer?

(The last answer was read.)

The Witness: That is correct.

Q. As depreciated as a result of your formula, how much does that amount to? A. 648,000. 1346

Cross-examination by Mr. Garfield:

Q. Mr. Wilbraham, how long a time did you take in inspecting the overhead trolley system? A. About ten days.

Q. What did you do, walk over all the lines? A. Walked over some sections, walked over all of it. Some of it, I did part of it on trolley and part of it I would walk, checking up certain sections that seemed to be vitally of interest, or that they might be in particularly good condition or not as well as might be expected. 1347

Q. You covered all the 129 track miles of the C. R. & L. System? A. I don't know about track miles. I wasn't interested in miles so much I was in condition of certain divisions. They were the divisions in Bridgeport and Shelton-Derby area, and from Derby up to Naugatuck, to Waterbury and the New Britain-Newington line.

Q. Can you tell us how many miles it would cover? A. No. I could add it up for you. I have the——

1348 Q. Would you mind doing that? A. (Witness refers to book.) Approximately 83 miles. I was not concerned with the track miles because, after all, a route is a route, and whether it is two tracks or a single track, I wasn't much concerned with.

Q. So you covered 83 miles in ten days? A. Yes.

Q. You were not loafing on the job, were you? A. No, not much.

Q. How much less than 50% of new condition could overhead wires get into and still be safe to operate? A. Well, that depends on how you
1349 determine safe. It is a matter of each person's judgment and depends on the schedule of the system and the character of the service. I have made the statement you can operate systems as low as 30 or 40%. That represents too much potential hazard and is very unwise to say. I think 50% is a reasonable figure that this company should be operated at.

Q. You would consider it unsafe to operate with overhead wires in less than 50% of new condition? A. I would consider that potential hazards were represented

1350 Q. Have you any idea what the $18,000 of what—— A. Pardon me. I couldn't hear.

Q. What the $18,000 of what you have called deferred maintenance would mean if translated into depreciation per cent on this property? A. Let me try and answer your question another way. I considered that this amount of money was the amount of money required to replace certain items of overhead equipment which would put it into a condition, we will say, of 50% of new, so that that is the way that that was determined.

Q. Then if that money wasn't spent it must 1351
have been in something less than 50% condition? A. Right.

Q. Can you give me any estimate as to what per cent condition it was in? A. I can't. I didn't look at it from that angle. I looked at it from this much more practical and thorough manner.

Q. You wouldn't say that that failure to spend the $18,000 would put it in 25% condition? A. I don't know. Sorry. I just didn't look at it from that point of view.

Q. Is it cheaper to buy or generate power for 1352
an ordinary trolley company? A. I don't know. I couldn't answer that unless all the specific conditions of operation and the tariffs and one thing or another were entirely unknown, coal rates——

Q. Do you know anything about conditions in Connecticut? A. I do not.

Q. Do you know whether it would be cheaper to buy or generate power in this territory where you made your inspection? A. We know that as of the present date power could be generated —if we take the tariff effective now on the C. R. & L. by the New Haven Railroad, which tariff was shown to us, that you could erect 1353
and operate the two power stations that we have reconstructed and generate the required amount of kilowatt hours that is being paid for under the present power contract.

Q. You are sure of that? A. That is our estimate.

Q. Have you got a study to determine it? A. Yes. We made certain figures considered necessary and relevant to determine that. That was for our own information.

1354 Q. Well, then, why didn't the C. R. & L. go into the power generating business? A. I don't know.

Q. In those estimates that you made, how much would it have cost the C. R. & L. to generate power per kilowatt hour? A. (Witness refers to book.) Sorry to keep you waiting but I have to look these up. (Pause.) Your Honor, if I may save the time of this Court and give my statement from memory, and allow it to be given without impairing my testimony, and it is satisfactory to counsel, I can give an approxi-
1355 mate figure.

Hincks, *J.*: Is it satisfactory to let the witness speak from memory subject to subsequent verification?

Mr. Garfield: Your Honor, I have no objection to that if we can have the subsequent verification.

The Witness: You can. It is in the books. I am just suggesting that to save the time.

Hincks, *J.*: Very well.

A. (Continuing) At Bridgeport, the purchased power is in the neighborhood of $100,000, and it
1356 could be generated in the neighborhood of $91,000, and the differential for the Derby-Shelton area was less than that. The generated power was less per annum. Those were per annum figures I have given you. Was less for Bridgeport. The differential was less.

Q. Do you recall what the kilowatt hour output was on which that $100,000 was based? A. No, if I could find the kilowatt hour cost I could get the two, because they are both together.

Mr. Garfield: May we have a copy of that study, your Honor?

Hincks, *J.*: I understood the witness was speaking from his field notes. Isn't he? 1357

Mr. Garfield: Well, they must be in such form that he could give us the rest tomorrow, let us say, in the form of a statement. We would like it because we have some figures of our own which show very much to the contrary.

Hincks, *J.*: I think you are entitled to it. I am a little reluctant to require the witness to remain over night for that one item. Would you have much else in the way of cross examination?

Mr. Garfield: I have a few more questions now. 1358

Hincks, *J.*: Supposing you exhaust those questions and we could then adjourn with the understanding that if the witness found the data before you leave, he could read it into the record and then be excused.

Mr. Garfield: You mean this afternoon?

Hincks, *J.*: Yes.

The Witness: Your Honor, these figures I have here are field notes, and they are not necessarily, as you know, in the conclusive and final form that a final report should be to submit to counsel. However, they are perfectly reliable notes that were used to determine the balance and general pictures of this general power situation. 1359

By Mr. Garfield:

Q. Does the 91,000 include anything for fixed charges, interest on investment? A. Nothing for fixed charges.

Q. What would the investment figure be on which the charges would be based? A. That is

1860 the figure that is in the report here. In other words, the only figure we have here is for the Sea View plant. Estimated replacement value now is $566,000. We did not consider any figure for fixed charges.

Q. Is that figure for cost of generated power based on alternating current or direct current? A. Alternating current.

Q. How much coal did you assume would be consumed per kilowatt hour in that figure? A. I will answer that too when I find it. There is one sheet in here that has the whole summary on it. I am sorry that I have to hold you up.

1861 Q. That is all as of today. Do you know what the relative cost of purchasing and generating power in Derby was in 1921 or in Bridgeport in 1927? A. I do not.

Q. Did you make any study of that? A. No, that was beyond the scope of the report.

Q. Are the figures for the generated power at Derby which you have not given but which you said showed a less differential than at Bridgeport, are those figures based upon the method of generation shown in your Exhibit 18? A. You refer to this as Exhibit 18?

1862 Q. Yes. Valuation of power generated and trolley feeder system. A. They are based on that.

Q. Does that mean they are based on three 600 kilowatt engine generators? A. Will you repeat your question?

Q. Does that mean they are based on three 600 kilowatt engine generators? A. The first part of your question preceding that.

(The Reporter read as follows:)

"Q. Are the figures for the generated power at Derby which you have not given but which

you said showed a less differential that at Bridge- 1363
port, are those figures based upon the method of generation shown in your Exhibit 18? A: You refer to this Exhibit 18?

"Q. Yes. Valuation of power generated and trolley feeder system. A. They are based on that.

"Q. Does that mean they are based on three 600 kilowatt engine generators?" A. First of all, the cost of the power is outside of the scope of this report, as I explained before. We were asked to find a figure for the reproduction cost new of these plants if they had been maintained in power condition, regardless of cost of power, 1364
but we did find for our own benefit and knowledge, an approximate cost of power. When we did it we considered, of course, probable labor, cost of labor, number of men, cost of fuel, and a proper figure for maintenance.

Q. And the generating machinery you have shown in this exhibit? A. But we did not take any fixed charges on the equipment of the plant, but it is on the basis of three 600 kilowatt machines.

Q. Where have you seen three 600 kilowatt machines in operation? Diesel engine driven. 1365
A. I don't know that I have specifically seen three 600 kilowatt machines, three 600 kilowatt.

Q. Where have you seen three 600 kilowatt Diesel driven engines? A. Specifically I haven't seen any 600 kilowatt Diesel driven engines at all.

Q. Where have you seen them? A. I have seen them in Texas. I have seen them in Kansas.

Q. When? A. 1932, 1933, and back in 1927.

Q. You are sure of that? A. Yes.

1366 Q. My information is that the only one which General Electric ever made was shipped to Australia in 1914. A. Diesel engine.

Q. 600 kilowatt? A. I said I didn't know about 600 kilowatts. I am not concerned with 600 or 800 or 1000.

Q. How do you know you could generate the power you are talking about with three 600 kilowatts Diesel driven engines? You have never seen it done. A. We have seen power generated by Diesel engines, but if you stick specifically to 600 kilowatts and not allow me latitude as to any other figure, why, of course, I must answer
1367 I have not.

Q. In other words, you have invented a plant here, the like of which you never saw, and set it up at Derby? A. Not at all. Not at all.

Q. Did you ever see any plant like this one? A. I have seen plants with three units in them, two units, and four units. That is a matter of engineering knowledge and practice, and whether it is three units or two, there is a perfectly well known method of attacking the problem and finding the proper answer.

Q. You say the trolley feeder systems were in
1368 good condition? A. I said generally they were in good condition.

Q. You didn't find any deferred maintenance there? A. Oh, yes, I have listed it.

Q. Is that included in your Exhibit 17? A. If this is 17, yes. I don't know the exact number.

Q. Your first exhibit is 17. A. That amount of money there. $18,000 is the amount of dollars necessary to replace physical equipment to bring it into a 50% condition.

Q. On the first page of your Exhibit 17, you say that, "In making our estimate of deferred

maintenance we made a quick examination and 1369
study."

That is a study you took eight days to make? A. Ten days.

Q. Ten days. I beg your pardon. It was ten days. That you describe as a quick examination and study? A. That is right.

Q. Covering eighty odd miles? A. The route miles, yes.

Q. Where did you get the information that the power which C. R. & L. is using in Derby is purchased from the New Haven Railroad? A. From employees and officials of the C. R. & L. 1370

Q. I think you are wrong in that information. Is the United Engineers and Constructors, Incorporated, an independent concern?

Mr. Martin: I ask counsel to define what he means by independent, please.

By Mr. Garfield:

Q. Is it under the control of any other interests? A. I don't know.

Q. In 1921, if you had had charge of the situation in Derby, would you have rebuilt that station or purchased power? A. On the basis of 1371
the figures that we find today which are the only guide that one can use, I would have done what those figures showed. A. I would have gone on and generated power.

Q. But you don't know anything about the situation at that time? A. I do not.

Q. The same would be true of Bridgeport in 1927? A. In 1927.

Mr. Garfield: That is all.

Hincks, *J.*: Subject to the item that has been requested, the witness is then through,

1372 with the understanding that he will supplement for the record information requested. It will be satisfactory to counsel to read that right into the record in the absence of the witness?

Mr. Garfield: Of course, that does not give us a chance to ask Mr. Wilbraham any further questions, but perhaps that is the best we can do.

Mr. Martin: I wonder if I could stipulate possibly the fact that Mr. Garfield has in mind. I understand from his questions that
1373 he sought to show that it was cheaper for the Connecticut Company to purchase power from the New Haven Railroad than to generate its own power in Bridgeport. Is that correct, Mr. Garfield? Because I would be perfectly willing to stipulate that.

Mr. Garfield: If you will leave out the New Haven Railroad, that is what I am seeking to show.

Mr. Martin: Didn't it buy from the New Haven Railroad?

Mr. Garfield: At some places.

Mr. Martin: At Bridgeport. I know it
1374 bought from the New Haven at Bridgeport. The New Haven has no right to sell to any but its subsidiaries and sold this power cheap, and I admit that the power bought by the Connecticut Company from the New Haven Railroad at Bridgeport was bought more cheaply than it could possibly have generated it, and that was the reason why.

Mr. Garfield: That may or may not have been the reason at Bridgeport, your Honor, but at Derby, in spite of what Mr. Wilbraham was told by C. R. & L. employees, the

power was bought from the Derby Gas & Electric Company and not from the New Haven, and our information is that again the cost of purchase was very much less than the cost of generation. 1375

Mr. Martin: Your Honor, I regard this as wholly immaterial and irrelevant, and I will admit that, if it will relieve this witness from having to come back here tomorrow and having to testify any more about this matter, because I do not think it has anything to do with my claim at all.

Mr. Garfield: I will ask this one more question. 1376

By Mr. Garfield:

Q. Is it not true that trolley companies in general all over the country are buying a very much larger proportion of their electric power now than they were ten or fifteen or twenty years ago? A. If you speak generally, yes, but specifically, that is not so in every case. Some are still generating.

Q. You know that the great bulk of those that are still generating are in New York and Boston? A. I think that is correct. There may be 1377 others that I can't recall at this moment.

Q. Outside of those two large cities, most, if not all, trolley companies are going to purchase rather than generate their power? A. I won't confine myself to just those two cities at all. I will just stick to the original statement which was what you yourself made, which was that generally all over the country they are buying power.

1378 By Mr. Wells:

Q. Do you know generally how many trolley companies in the United States are generatinng power? A. No.

Mr. Martin: But I will stipulate with you any number that you will state.

Hincks, *J.*: Do I understand counsel are done with this witness?

Mr. Garfield: We will forgive him the information he has not furnished. We won't need that.

1379 Mr. Lurie: I appeared earlier in the hearing arguing in support of the Connecticut Railway and Lighting, on behalf of a group of common stockholders. I would like to ask your Honor's permission to file a brief directed to the matters argued at the early part of this hearing, in connection with the status of the Connecticut Railway & Lighting as a debtor.

HOWARD M. SMITH, Stratford, Connecticut,
1380 called as a witness on behalf of the claimant, being first duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. MARTIN:

Q. Mr. Smith, what is your employment at the present time? A. At present superintendent of equipment of Connecticut Railway & Lighting Co.

Q. Before that what was your employment? A. General foreman for the Southern Pennsylvania Bus Company.

Q. How long did you occupy that position? A. Eleven years.

Q. When did you give that up? A. On August 1381
15, 1936.

Q. Then you came to the C. R. & L.? A. That's right.

Q. When you were general foreman of the Southern Pennsylvania Bus Company, what were your duties? A. My duties were to supervise the repair and maintenance of bus equipment on that property, and write specifications for new buses, and bus repair in general.

Q. Did you purchase new busses? A. Yes, I had a hand in it.

Q. Are you familiar with the price of busses 1382
and their cost depreciation? A. I am.

Q. Also the cost of operating them and keeping them in repair? A. I am.

Q. Did you make a survey and appraisal of the busses turned over on November 16, 1936 to the C. R. & L.? A. I did.

Q. Did you write a report on that? A. I did.

Q. I show you this document and ask you if that is the report? A. That is the one.

Q. That shows the detailed condition of each particular bus turned over, does it? A. That's right.

Mr. Martin: I offer the report in evidence. 1383
Hincks, *J.*: Exhibit 19.

(The report referred to was then received in evidence and marked "C. R. L. Exhibit 19.")

Q. (By Mr. Martin) In making up this report you not only examined the actual busses but used the reports of The Connecticut Company with regard to the history of the busses, is that correct? A. That's right.

1384 Q. In your opinion are the figures used in your report, where they involve conclusions as to prices or conclusions as to the condition of busses reasonably correct? A. Yes, sir, they are correct.

Q. On the last page of the report—have you a copy of it? A. Yes, sir.

Q. There is a summary covering Bridgeport, Norwalk, New Britain and Waterbury areas? A. That's right.

Q. The summary indicates that the value of the busses in the Bridgeport area as received on November 16, 1936 was $117,268, is that correct? A. That is correct.

1385 Q. And that in Norwalk the value of the busses received was $22,975, is that correct? A. That's right.

Q. At New Britain the value of the busses received was $5,958? A. That is correct.

Q. In Waterbury the value of the busses received was $36,415, is that correct? A. Right.

Q. That makes a total of all the busses received in those four payments of how much? A. $182,615.10.

Q. Can you tell us that those busses would have been worth new? A. Yes, sir. We have

1386 taken fifty per cent of the value of the bus new, which gives $497,000 for that mark. We have it totaled up here, and the way we arrive at that —thirty-five to thirty-seven passenger busses are worth in the neighborhood of $10,000; twenty-nine to thirty-two possenger busses, $8,500, and twenty to twenty-one passenger busses, $5,000.

Q. When you say "in the neighborhood," you mean that the current price in 1937 is exactly the amount you testified? A. That's right. I used the round figure here. It may be a dollar or two one way or the other.

Q. How many busses were taken over in all? 1387
A. 126.

Q. Do you know what those were worth new at their replacement value in 1937? A. $994,200.

Q. If they were depreciated fifty per cent, how much would they be worth then? A. $497,100.

Q. You arrived at a conclusion as to their value on the date they were turned over, and how much was that? A. $182,616.

Q. The difference between their value as appraised by you when they were turned over and their fifty per cent depreciated value is how much? A. $314,484.

1388

Hincks, *J.*: I don't quite understand your contention, Mr. Martin. How much do you claim altogether on account of the busses?

Mr. Martin: We claim on account of the deferred maintenance of busses $314,484, and, your honor, that is arrived at this way. We estimate what the 126 busses would be valued at if they were depreciated fifty per cent on the date they were turned over to us. Then we appraise their actual value, and when we take their actual value, from that they would be worth, if depreciated fifty per cent—the 1389
difference is $314,484, our contention being that the busses that were turned over to us ought to have been no more than fifty per cent depreciated.

Hincks, *J.*: I understand your claim in that respect. It is the other element of the claim I don't understand.

Mr. Martin: What is the other element, sir?

Hincks, *J.*: That is what I don't know, but you claim apparently more than $314,000.

1390 Mr. Martin: I cannot take up the shortage at this moment, because one of my witnesses is in Bridgeport, and won't be here for forty minutes. So that I am skipping shortage for the moment, and merely offering evidence of deferred maintenance of buses.

Now, I am going to "H" on the outline and offer evidence as to deferred maintenance on trucks and miscellaneous equipment.

Q. (By Mr. Martin) Mr. Smith, you made an inspection of the trucks and miscellaneous equipment turned over to C. R. & L. on November 16,
1391 1936, did you not? A. I did.

Q. You wrote a report on that matter? A. I did.

Q. I show you this paper and ask you if that is the report that you made? A. This is the report.

Mr. Martin: I offer the report in evidence.

(The report referred to was then received in evidence and marked "C. R. L. Exhibit 20".)

Q. (By Mr. Martin) How many trucks were
1392 taken over on November 16, 1936? A. There was twenty-three pieces of miscellaneous equipment in all, and those were trucks—some were trailers; some were tractors.

Q. But they were all vehicles? A. Yes.

Q. Did you estimate the original cost of those vehicles? A. The original cost came from penciled copies here made by The Connecticut Company.

Q. That were turned over as a part of their records? A. That's right.

Q. How much was fifty per cent of the original 1393
cost? A. Fifty per cent of the original cost was $20,824.

Q. As appraised by you what was the actual value of those vehicles when received from The Connecticut Company? A. $1,533.

Q. The difference between fifty per cent of the original cost and the value when actually received amounts to how much? A. $19,291.

Q. The details of the appraisal are contained in your report? A. That's right.

Q. The report is correct? A. Right.

Q. Garage equipment. Did you take charge of 1394
the maintenance and upkeep of the C. R. & L. buses on November 16, 1936? A. I did.

Q. When you did that, did you make a survey of the garage equipment and tools on hand in the shops? A. I did.

Q. Do you remember how many shops there were? A. Bus shops at that time were four.

Q. Where were they? A. Bridgeport, Norwalk, Waterbury and New Britain.

Q. Did you make an appraisal of what was necessary in your opinion for garage equipment and tools in order to service the 126 bus which 1395
were taken over? A. I did.

Q. Was an inventory made by you of the tools which were turned over to you? A. That's right.

Q. In your report is there a list of the tools and equipment which in your opinion were necessary to service 126 bus but which were not turned over to you or found in the shops on November 16, 1936? A. There is.

Q. Is this the report which you made? A. This is the report.

Q. This contains all these details of the tools that were missing? A. That's right.

1896 Q. With the appraisals of their value? A. Right.

Mr. Martin: I offer the report in evidence.

(The report referred to was then received in evidence and marked "C. R. L. Exhibit 21.")

Q. (By Mr. Martin) Mr. Smith, what is your estimate of the value of the total shortage of tools and garage equipment? A. $14,515.44.

Q. When you took over the superintendence
1897 of the maintenance and upkeep of the busses on November 16, 1936, did you have an inventory made of the spare bus motors, transmissions and differentials and other unit parts necessary? A. I did.

Q. Then did you make a list of such spare units as in your opinion were essential to servicing 126 busses, but which were lacking in the inventory? A. I did.

Q. I show you this document and ask you if that is a report which you made? A. That is the report.

Q. This report shows the spare bus equipment
1898 and unit shop requirements which were lacking together with the cost of these parts if they were to be bought? A. That's right.

Q. This report is correct in your opinion? A. Right.

Mr. Martin: I offer it in evidence.

(The report referred to was then received in evidence and marked "C. R. L. Exhibit 22.")

Q. (By Mr. Martin) Can you tell me the total 1399
cost of the spare units which were lacking, which in your opinion were essential to the servicing of the 126 busses turned over? A. $6,704.09.

CROSS-EXAMINATION BY MR. GARFIELD:

Q. Mr. Smith, what is the normal life of a bus such as you used in your Connecticut Railway & Lighting territory? A. That is figured two ways. From the obsolescence standpoint I have figured in my report——

By Hincks, *J.*: 1400

Q. Which report? A. The larger report on the bus.

Hincks, *J.*: Exhibit 19?

Q. (By Mr. Garfield) Your first exhibit? A. Yes, yes. A thirty passenger bus regardless of condition in my opinion is obsolete for operating and rider appeal. In other words, a bus over eighty-four months in this capacity jeopardizes our business.

Q. That seven years is what you call the life of that bus? A. Yes.

By Hincks, *J.*: Q. Where is that reflected in 1401
your report? Could you refer me to the page? A. On page one.

Q. Very well. A. On a smaller twenty passenger bus we have set up sixty months or five years. My other figures were arrived at from the miles that were operated on the particular units from date of overhaul taken from The Connecticut Company records.

Q. Of course, you don't actually scrap a bus at the end of those periods if you have it on hand, do you? A. Well, we have on our other property.

1402 Q. You have no busses on your other property older than five or seven years for the twenty or thirty passenger type? A. I would say possibly two or three.

By Hincks, *J.*:

Q. What other property do you refer to? A. I am talking about the Southern Pennsylvania Bus.

Q. (By Mr. Garfield) That is the same property that Mr. Reilly is manager of? A. Mr. Reilly, yes, sir.

1403 Q. What did you do for spares for emergency use if you scrapped all those old busses after they reached the obsolescence stage? A. Our spares as far as the mechanical development is concerned should be a bus that we would take on any line or any division. We have on our property a preventive maintenance setup, whereby the bus comes in for certain adjustments every so many thousand miles, and the bus that we put on in its place would have to be a good bus, in order to run a run. In other words, an obsolete bus would not be able to make it.

1404 Q. As a matter of economical management, if you have some busses that are just over seven years old, isn't it wise to keep them around in case of a snow storm or some emergency? A. We have found out that by keeping that type of equipment around it would cost you more because the equipment is run down. Possibly the motor will break in half or the differential, when you try to use it in that kind of service, and in my opinion the bus is without value, outside of the scrap value.

Q. That, of course, is not talking about rider appeal. That is talking about physical usability, isn't it? A. That's right. 1405

Q. A moment ago you said that seven years was the limit of rider appeal? A. I spoke of that investigation. Every mechanical man has to take in some of the problems of the operating department and work closely with them. And in my opinion a bus that is eighty-four months old is obsolete from that standpoint.

Q. But it wouldn't be necessarily obsolete from the standpoint of physical condition? It could be used? A. Oh, it could be used, yes, if the maintenance was kept up on it. It could be used in emergency. 1406

Q. Yes. Thank you.

CROSS-EXAMINATION BY MR. WELLS:

Q. It could be used indefinitely? A. For emergency purposes, yes. The style of busses eighty-four months old on our particular property —some of the twenty-six and twenty-seven—if we attempt to run that type of bus on hard service.

Q. Which, of course, it wasn't designed for. A. They are not designed for high speed. It would make the operation very costly. 1407

Q. What was this company you came from? A. Southern Pennsylvania Bus Company.

Q. It was solely a bus company, not a trolley company? A. The trolleys were completely converted.

Q. How long has it been completely busses? A. Between four and five years.

Q. How long has it been operating busses? A. Since 1925.

1408 By Hincks, *J.*:

Q. In order that I may be able to find my way around in this voluminous report, let me ask you whereabouts in Exhibit 19 is the detail from which you arrive at your estimate of the actual value of the busses repossessed by C. R. & L.? A. Your honor, I haven't got these pages marked as to numbers. Possibly I could show you this. (Witness steps to judge's bench) On busses over eighty-four months old we have listed in value of scrap. To date we have sold about eight of them. That is all we can get for them. The
1409 busses that are in operating condition and which are under eighty-four months old we arrive at this way, that it cost in material $486.27 list price. We take the discount, which is thirty per cent in this particular case. That makes it $340.39. We add labor charge here of $62.40. We take the date of overhaul on this particular unit, which happens to be an engine, the miles operated since the date of overhaul, which came from The Connecticut Company's report, and the percentage or mileage left for us. We feel as though for us to put this bus in good condi-
1410 tion we have to spend $402.799, and that follows all through the busses that are under eighty-four months old.

Q. Where does that figure find itself reflected in your final completion? A. On the last page here. Our value would be $182,615. The reason for the difference between $184,000 is that I had the trucks in one report, and they wanted them separated. So we took the trucks out. Then we arrived at the figure from The Connecticut Company's report as to the valuation of these busses. Then we took fifty per cent of them, which gives

us $236,000 in the Bridgeport area or $117,267.58 1411
for the Bridgeport area as value received, and our contention there or claim is this deducted from the fifty per cent of the new value.

Q. Using that method isn't this true, that in estimating the actual value of the busses repossessed, you use one method of valuation, and in estimating the value of what you claim you are entitled to repossess you use another method of valuation? A. Well, the two methods of valuation we use there—we don't attempt to set up any deferred maintenance on busses that were over eighty-four months old. We listed them in 1412
value as scrap.

Q. If you took the case of a bus that is fifty per cent depreciated and apply to it the measure of valuation that you actually used with respect to the busses that were repossessed, you would not necessarily arrive at a result that is one-half of cost, would you? A. We figured it this way, your honor. It wasn't right for us to assume that every bus that was turned over to us should be new, and that is the reason why we do feel as though they should have been fifty per cent new.

Q. Could you find for me again a sheet show- 1413
ing a detail that goes into your estimate of the actual values of busses repossessed? A. This happens to be the summary of the Bridgeport Division. The unit value, that is, the value that we say should have been, $129,000 here. Deferred paint maintenance is $1,512.90. Deferred engine maintenance is $6,459.42. Deferred transmission maintenance is $1,845.32. Deferred differential maintenance is $1,921.78. Or a total of 117. After this has been deducted from this figure here——

1414 Q. Well, how do you arrive at those figures? A. These figures here we have used on the principle that eighty-four months is the life of the bus.

Q. That is the unit value? A. That's right.

Q. I understand that, but how do you arrive at the deferred paint maintenance figures? A. We have taken the bus by number, the date it was painted, the age in months, the percentage that is left for the C. R. & L. and the value left and the deficiency, and on our first page here when we are describing this——

Q. Never mind the first page. But how do you
1415 get at those figures? A. I say, so we believe that in this part of the country, taking in the low temperature, salt water and conditions and methods of washing and cleaning, eighteen months is the life of the paint. We have taken from the date of our record from the last time the bus was painted, using eighteen months as a base figure, the cost of painting a thirty to thirty-two passenger bus is $90; for a twenty to twenty-five passenger bus is $60, and this cost includes both labor and material. Percentages are figured from date of painting, including the
1416 month of painting as a full month, to November 1, 1936.

Q. So much for the painting. Now, where are the other items? A. Engines. Engines are depreciated on the amount of miles operated since the date of overhaul. The parts which are listed on the various types of busses are parts that ordinarily would have to be replaced on overhaul, taking for granted that deferred maintenance of some kind was in effect, and that lubricants were used along with periodic and conscientious drainings and inspections. You will

notice under the heading we have busses listed— 1417
(reading). ". . . at 60¢ an hour . . . transmission . . . from experience we believe . . . on any bus."

Q. I see where you are getting the matter, which is all I want at present? A. Yes.

Q. Isn't this so? Take the case of a $10,000 bus. What is that, a thirty passenger bus? A. About thirty-five to thirty-seven passenger.

Q. The life of that, you say, is about seven years? A. Seven years.

Q. If you apply to such a bus the same maintenance charges, the same charges for deferred 1418
maintenance that you have used in this report, wouldn't the deferred maintenance in three and a half years on that basis exceed fifty per cent of the cost? A. Not lone cases, your honor. It would depend on how many miles the bus was operated. A bus in three years could be run 150,000 miles.

Q. On what basis of mileage comparison are your maintenance tests constructed? A. A hundred thousand miles.

Q. Annually? A. No, not annually. It is possible for a bus to reach a hundred thousand miles in about a year and a half. I have used only 1419
eighty-four months in cases where the bus was over eighty-four months.

Hincks, *J.*: That is all I have in that particular report.

(Witness returns to the witness stand.)

Hincks, *J.*: I don't know whether counsel are finally going to be at issue over this item or not, but if there is any issue of the facts, and it is necessary to include an argument as to facts in your brief, I think it is

1420 going to be somewhat difficult when this report has no page reference. It is a very voluminous report. Perhaps counsel can agree on numbering the pages so that they can refer to them. So far as I can tell now, there may be no issue of facts there. I think I have asked enough questions to indicate my own——

Mr. Martin: Your Honor, the ribbon copy of that report is in evidence, and here is a copy of mine, and Mr. Wells has a copy.

Hincks, *J.*: Well, I don't think we need——

1421

Mr. Garfield: Suppose we number them.

Hincks, *J.*: If you find it necessary and you don't find you will be in any disagreement, you can number them then, or number them before you leave, if you think it is going to be necessary.

Mr. Martin: Wouldn't it be a good idea to withdraw this from the custody of the court, and take it down to your office and number it. If you honor will give me that original report I will get Mr. Wells to take it down to his office and number that and

1422 the two copies, and then he will bring it back again.

Hincks, *J.*: I think I had better hang on to it until I am sure we won't need it.

Mr. Garfield: My idea was maybe it could be done at lunch.

The Clerk: I think I can do it here.

By Hincks, *J.*:

Q. On the report dealing with garage equipment, if you add the items listed in exhibit 22 to the garage equipment tools which were ac-

tually received from The Connecticut Company, 1423
how long would that fund of tools last in your opinion for the service of the fleet? A. These tools would last for the next four or five years.

Hincks, *J.*: Do you claim, Mr. Martin, that the claimant was entitled to receive four or five years' supply of garage tools from the——

Mr. Martin: It is my understanding that tools are not used up the way spare parts are. A hammer or a screw driver will last ten years until it is lost. Yet without a hammer it might be absoutely impossible to 1424
do certain fundamental operations, and the tools that they turned over to us were insufficient to do the operations necessary to be done. And they ought to have been there. It is not a question, I think, of five years' supply of tools. It is a question of complete sets of tools to do the work necessary to be done at once.

Hincks, *J.*: Then let us consider the next report, the spare units. Which report is that?

Mr. Garfield: 22, I think, your Honor. 1425

By Hincks, *J.*:

Q. Yes, Exhibit 22, Spare Bus Equipment, Unit Shop Requirements. (To witness) If you added the items listed on Exhibit 22 to those actually received, how long would that supply have served for the necessities of the fleet, or what in your opinion would have been the reasonable life of that supply? A. Your Honor, maybe I can explain it this way. The Con-

1426 necticut Company uses the system whereas they have one shop that does all the repairs for all divisions, and in this one shop they keep the spare engines and the transmission and differential, and so on, so that at any time any division could call on it it was available. In our operation we have to do the same thing, and that would apply to the shop equipment itself. None of the divisions that we have taken over was in any position to overhaul an engine on account of not having the tools. They were all housed in one shop of The Connecticut Company.

1427 Q. I am talking about tools now. I am talking about these spare parts. A. These spare parts here, it would be hard to set a life on them.

Q. I am not asking you to set a life on the individual parts. The question is not how long a part lasts when it is on the shelf in the storeroom or when it is used as a replacement. My question rather is how long would this stock of spare parts serve the necessities of efficient operation? In other words, if when the C. R. & L. had come into possession of the leased lines, it had received all the equiment listed on your Exhibit 22, together with that equipment which it

1428 actually did receive how long would it have been before it would have been necessary for you to renew that fund of spare parts? A. Only in case of an accident or complete damage to the entire unit we could rush them indefinitely. By having these units it enables us to go ahead and overhaul our fleet and put it in proper shape, and these units would still rotate without tying the bus up. Take the engine, for example. We would put it in another coach. Then that engine would come out and the necessary repairs done to that.

So that would go on indefinitely as long as we wanted to run the bus. 1429

Hincks, *J.*: Well, I won't take further time by questions. I observe with respect to that last item that either I don't understand the theory of your claim, or I don't understand the effect of the evidence as it appears on that claim.

REDIRECT-EXAMINATION BY MR. MARTIN:

Q. Mr. Smith, did you ever seen The Connecticut Company's central repair plant in New Haven? A. I did. 1430

Q. In that plant were these spare units? A. Yes, sir.

Q. Were the tools that we missed that were not turned over to us there? A. Yes.

Q. That was the central repair plant where they have their repairing done? A. Yes.

Q. When they turned over Bridgeport, Norwalk, Waterbury and New Britain to us, there was no central repair plant in any of those areas, was there? A. No.

Q. The custom of The Connecticut Company was, if there was a breakdown in Waterbury, to repair it from the central repair shop in New Haven? A. That's right. 1431

Q. What they did, then, was to keep all these spare units and tools that were essential in New Haven, which was in their territory, and turned over hardly anything in Bridgeport and Fairfield, is that it? A. That's right.

Mr. Martin: In other words, your Honor, they had all these things, but they had them in their repair shop in New Haven, which

1432 was in their territory, and they just left us flat.

Hincks, *J.*: What do you claim that C. R. & L. was entitled to receive in the way of spare parts?

Mr. Martin: I claim that they were entitled to receive all that they did receive plus all that is in those reports, because those spare parts constituted a revolving fund.

Hincks, *J.*: That is what I cannot make out from the evidence, Mr. Martin. I asked the witness how long this what you call revolving fund would last, and as near as I could
1433 understand him he said forever, which is not my understanding of a revolving fund. Perhaps I did not understand him.

Mr. Martin: If without testifying, may I say my understanding of it. A spare unit may be a whole engine. On a breakdown in a bus instead of sending out a crew to tinker with that engine, which may tie up the bus for six hours, they put the spare engine on a truck, run it out, take the old engine out, put the new one in and the bus goes off with that spare engine unit in it. It may run a hun-
1434 dred thousand miles with the new engine. Then they take the old engine to the repair shop and repair it, and as soon as it is repaired, that engine become a spare part, and again the next time the engine breaks down, that engine is taken out and put in the broken down bus. That is the way this revolving fund works, and it does practically work forever, but you have got to have it if you are going to run your fleet of busses for a day, because at any moment you have got to have it. These are the things that they did

not give to us at all, but have got in their 1435
New Haven central repair shop.

Hincks, *J.*: If you are satisfied you have evidence to support that theory, I won't take more time. I don't mean to imply that you have not. I should have to read the transcript with care before I am satisfied.

By Mr. Martin:

Q. I will ask the witness how these spare units —the extra parts—were used to supply the system. Maybe I haven't got it right? A. You have got it right. 1436

Q. You explain it in your own words on the record. A. In case of an internal failure of an engine, transmission or differential on any division of The Connecticut Company it was the practice to take out and return that part to the New Haven repair shop for overhaul, who in turn sent a rebuilt unit to take the place of the damaged unit.

Q. Mr. Smith, is that the custom in operating fleets of busses that you are familiar with? A. Absolutely.

Q. In your opinion that is an efficient way to do it? A. It is. 1437

Q. Continue. A. So in my claim that I feel as though we are entitled——

Q. Never mind about that. When you took over the C. R. & L. property, was there any central repair shop? A. No, sir.

Q. Did you have spare units handed over to C. R. & L. with which you could put into operation this system which you could describe? A. I had some; I didn't have enough.

Q. The list that you have made up and which has gone into evidence, is a list of the spare units

1438 which in your opinion were necessary for the operation of the property? A. That's right.

Q. How was the entire revolving supply of spare units and spare parts replenished? A. In very rare instances was the whole unit completely damaged. There were always parts wearing out that we bought and added to and charged to that particular division that had the breakdown.

Q. In other words, as the spare parts and the units were completely consumed, new ones were purchased? A. That's right.

Q. But was the total amount of those spare parts and spare units kept at the level at which
1439 you propose to start out with in your report? A. Yes.

Q. In other words, that didn't diminish? A. No.

HERBERT A. GEORGE, Fairfield, Connecticut, called as a witness in behalf of the claimant, being first duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. MARTIN:

1440 Q. Mr. George, you are employed by the C. R. & L.? A. I am.

Q. In Bridgeport? A. I am.

Q. What is your position? A. Assistant treasurer.

Q. You work in the main office at Bridgeport? A. I do.

Q. Where is that? A. 177 State Street, Bridgeport, Conn.

Q. Have you been working for the C. R. & L. since November 16, 1936? A. I have not.

Q. You have not? A. I have not.

Q. Whom did you work for on November 16, 1936? A. United Gas and Improvement Company. 1441

Q. When did you come to the C. R. & L.? A. On April 16, 1937.

Q. At that time did they have an office in Bridgeport? A. They did.

Q. Had you been in that office in Bridgeport previous to that date? A. I had.

Q. When did you come to that office first? A. In December, 1936 or January, 1937. I am not sure which.

Q. But you were not when they opened the office? A. I was not.

Q. Do you know what property was turned 1442 over in the way of office equipment to C. R. & L. on November 16, 1936? A. There was none for a general office.

Q. There was none for an office in Bridgeport? A. For a general office in Bridgeport.

Q. Was there none for any office in Bridgeport? A. There was no furniture turned over for a local office in Bridgeport or district office.

Q. Is the office that the C. R. & L. has in Bridgeport a general office? A. It is.

Q. Do you know where the general office of The Connecticut Company was? A. The general 1443 office of The Connecticut Company was in New Haven, Connecticut.

Q. Do you know what furniture and office equipment was purchased by the C. R. & L. in order to equip their general office in Bridgeport? A. I do.

Q. Did they use also the furniture and office equipment that was turned over to them on November 16, 1936 for this purpose? A. There was none turned over for this purpose, so there was none to be used.

1444 Q. Well, was there any turned over in Bridgeport which it would have been possible to use for a general office? A. There was none available that I know of.

Q. What does that mean? A. You asked me the question whether there was any furniture turned over as of November, the 16th.

Q. Yes. A. As I understand and as I have found out, there was no furntiure turned over for general office use. Therefore, there could be none available.

Q. Was there any furniture turned over for any use? A. Yes, there was furniture turned
1445 over for the district or local office.

Q. Have you got a district or local office in Bridgeport also? A. Yes.

Q. That furniture that was turned over for the district or local office in Bridgeport is used by C. R. & L. now in that local office? A. That is correct.

Q. Did you make a list of the furniture and equipment which was purchased for a general office in Bridgeport? A. I did.

Q. I hand you that list and ask you if that is the list that you made? A. That is the list.

1446 Q. How were the prices that are attached to those items arrived at? A. As purchase cost.

Q. Were those things actually purchased? A. They were all purchased with one exception.

Q. Which is that? A. That is the mimeograph machine.

Q. Has that been ordered? A. That has not been ordered as yet. There is a new machine coming out, and the purchase has been delayed.

Q. In your opinion as assistant treasurer and a member of the office is a mimeograph machine necessary? A. It is.

Q. Are these other items necessary? A. They 1447
are.

Q. What is the total cost of these items? A. $9,081.30 including the machine which has not been ordered.

Mr. Martin: That item is changed in the outline, your Honor. I offer the list in evidence.

(The list referred to was then received in evidence and marked "C. R. L. Exhibit 23".)

Q. (By Mr. Martin) These items are all actually used now in the general office of C. R. & L., 1448
Bridgeport, with the exception of the mimeograph machine, is that correct, Mr. George? A. That is correct.

Cross-examination by Mr. Garfield:

Q. These are the actual new prices, are they not? A. They are new prices, that's correct.

Q. You have not been as generous, that is, as the purchaser, in giving us the benefit of a fifty per cent depreciated condition? A. It was necessary to buy equipment. It was found impossible at that particular time to buy good used or new 1449
equipment. We made a special effort to get certain rebuilt equipment such as calculating machines and typewriters. We found it was not an economical thing to do. For instance, an Index Visible cabinet we made a special effort to buy as used or rebuilt. We couldn't find any such thing in this district. Now, it may have been possible to buy it in Philadelphia or New York, but the cost of transportation would have been very heavy, and it was needed in a very short time, and we didn't have time to investigate.

1450 Q. The result is that you have charged us with brand new general office equipment? A. That is correct.

Q. Do you know whether at the time C. R. & L. turned over the property to us in 1906 they turned over brand new general office equipment? A. I don't know.

Q. You weren't with the company at that time? A. I was not.

Mr. Garfield: Mr. Martin, I want to ask some witness some question about the inter-
1451 relations of various companies that have been mentioned. Is this an appropriate witness to ask that of?

Mr. Martin: No. Bodine is here.

Mr. Garfield: At some time I want to ask those questions.

Mr. Martin: All right.

Hincks, *J.*: Perhaps I might ask you, Mr. Martin, what has happened to your fifty per cent theory on this item? Why doesn't it apply as well here as in respect to the earlier items?

Mr. Martin: I have no good answer to
1452 that. I think that it would. I think that the claim probably ought to be cut in half, in which case it would become $4,540.65. That went into the record.

GEORGE H. CROSSON, Bridgeport, Connecticut, called as a witness on behalf of the claimant, being first duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. MARTIN:

Q. Mr. Crosson, what is your occupation? A. Manager of the C. R. & L. Company, Bridgeport Division.

Q Does the Bridgeport Division include Nor- 1453
walk? A. It does.

Q. For whom did you work before you worked for C. R. & L.? A. The Connecticut Company.

Q. What was your position with them? A. I was a clerk of The Connecticut Company, New Haven, starting in 1911. I was sent to Bridgeport in 1920, and was chief clerk to the manager of Bridgeport until 1933, and then manager from 1933 to date, until the time C. R. & L. took over the property.

Q. What were your duties as manager in Bridgeport and Norwalk after 1933 for The 1454
Connecticut Company? A. My duties as manager—supervising general operation.

Q. Did you have to do with the trolley operations? A. I did.

Q. And with the busses also? A. Yes, sir.

Q. You were the supervisor of the operations of these vehicles, is that right? A. That's right.

Q. Were traffic checks taken from time to time under your supervision? A. They were.

Q. Have you any of those traffic checks in Bridgeport from 1933 on? A. Yes, sir, I have.

Q. May I see them, please? These papers that you handed me are all traffic checks that 1455
were made by you as manager at Bridgeport? A. Yes, sir.

Q. By whom were they made? A. By various employees, sometimes a starter, sometimes an operator, sometimes one of the clerical force.

Q. Is it part of their business to make these traffic checks and report them to you? A. It is at my direction.

Q. You directed that these checks be made? A. Yes, sir.

1456 Q. Were they made regularly or just when directed? A. Just when I directed them.

Q. The dates on these traffic checks indicate when they were made? A. Indicate the dates they were made.

Q. That is the date, that day that covered? A. Yes, sir.

Q. From those traffic checks can you tell the bus number or the bus involved? A. Yes, you can.

Q. Were those Connecticut Company busses that were involved here? A. Yes, sir, they were.

1457 Q. The traffic checks appear only to cover busses, is that right? A. Just to cover busses, yes, sir.

Q. These busses were run on a schedule? A. Yes, sir.

Q. How did the man who made the traffic check operate? How did he get this information? A. He was stationed at a given point and made notation of the time, usually of the arrival of the bus and the number of passengers in the bus.

Q. Was it part of his duty to time the bus to see if it was on time with its schedule? A. If we were taking such a check it was, as some of those

1458 checks would indicate.

Q. Was it part of his duties to count the passengers in the bus when it passed that point? A. It was.

Mr. Martin: I offer these traffic checks in evidence.

Mr. Garfield: Will you state what the purpose of this exhibit is, Mr. Martin?

Mr. Martin: The purpose of the exhibit is to show that the busses were overcrowded and were running late on their schedules.

Mr. Garfield: About what dates? This 1459
was all before the property was turned back to you?

Mr. Martin: Yes, sir.

Mr. Garfield: Have you any more copies?

Mr. Martin: No, those are the only ones I have.

(The traffic checks referred to were then received in evidence and marked "C. R. L. Exhibit 24.")

By Mr. Martin:

Q. When traffic checks were made in this man- 1460
ner, did you take any action in regard to them? A. Yes, the traffic checks would show the condition as existing, and we would try to correct it either by changing our schedule or re-arranging service.

Q. Where the traffic checks indicated that a bus was overloaded or running behind its schedule, what did you do? A. If we could re-arrange the schedule to correct it we did. If we hadn't the equipment on hand, there wasn't very much we could do but just run as many busses on the line as were available. 1461

Q. Did you run as many busses in the Bridgeport and Norwalk territory as you had available? A. Yes, sir.

Q. When those traffic checks were made, were you running all the busses that you had available? A. Yes, sir.

Q. Then it was impossible, in case delays or overcrowding were indicated on the traffic checks, to put any more busses into operation? A. It was impossible to add additional busses.

1462 Q. Did you make reports with regard to such a situation? A. Yes, sir.

Q. To whom did you report? A. To the general manager, in New Haven; the vice-president and general manager later.

Q. Vice-president of The Connecticut Company? A. The Connecticut Company, New Haven.

Q. Were new busses or additional busses supplied to you as a result of those reports as far as you know? A. No, sir, they were not.

Q. Did you have any other method of ascertaining the sufficiency of the bus besides these traffic checks? A. We had a method of an inspector or
1463 a starter reporting conditions as he saw them, reporting firstly to the despatcher. Also a complaint may come in and be received by the despatcher and written in a day book.

Q. Were records made of those complaints? A. Records were made of those complaints.

Q. Have you any of those records with you? A. I have, yes, sir.

Q. May I see them? This book that you have handed me, is this limited to complaints with regard to either overcrowding or lateness of busses? A. No, it is not. It is limited to de-
1464 spatcher's duties from the time he goes to work until he is through each day.

Q. Are there items in this record somewhere which would indicate either overcrowding or busses running late? A. Yes, sir, there are.

Q. Are they any particular place? A. In this particular book they happen to be listed here as to the dates and the page number.

Q. Did you make that index? A. No, I did not.

Q. This book appears to cover the period June 30, 1936 to August 8, 1936? A. Yes, sir.

Q. That is a period during which The Connecti- 1465
cut Company was operating these busses? A. Yes, sir.

Q. When I examine these items they appear to record action taken, is that correct? A. Yes, sir.

Q. The first item appears on page five, does it not? A. Yes, sir.

Q. Will you explain that item on page 5? A. On page 5 it is recorded 4:18 P. M. to cut out——

Q. Just a minute. On what date was that? A. June 30th. To cut out No. 105 tripper; no busses. That means there are no busses in the garage available.

Q. What does No. 105 tripper mean? A. That is 1466
an extra bus that may operate in the morning and evening rush hour.

Q. Does that entry mean that that bus had to be cut out on that date? A. It meant that it had to be cut out, yes, sir.

Q. Why was it cut out? A. Because there were no busses available to operate.

Q. What is the next entry in that book? A. The next entry is on page 6, the same date, June 30, 1936. It says; (Reading) "Cut out Pleasure Beach bus; trolleys put out." That meant that the trolleys were put out on the Pleasure Beach 1467
run. We operate a bus run to Pleasure Beach beyond the limit of the trolley line; and without any busses available, if passage was required, we added trolley cars in their place. It didn't take them to the destination they wanted to go, but it took them as near to that destination as we could get them with the trolley. It says: (Reading) "Trolley put out." On the Milford line there were four trips that we turned back. That means that they were late and turned back

1468 busses were used. It also says we cut out No. 135 tripper.

Q. Will you take all th items in July, 1936 that are in that book, and explain them to us, please? A. All the items in this book in July, 1936?

Q. Yes, for one month? A. There are records of reports received by the despatcher and recordings of what action was taken by the despatcher.

Mr. Garfield: If your honor please, I haven't wanted to object, but it seems to me this is hearsay on hearsay, and I wonder if
1469 it is a proper method of proving this statement.

Mr. Martin: I suggest, your honor, that these are entries made in the course of business by the man whose business it was to make them. We have here the manager of operations of Bridgeport showing reports that were made to him in the course of business and the action that he took on them. What I propose to do is to take a single month, and then to ask him if that was typical.

1470 Mr. Garfield: I do not question that these entries were made in the book by the despatcher, which is what Mr. Martin is talking about, but these purport to be nothing but reports which came to the despatcher. Whether they were reports from irate patrons who found themselves inconvenienced or from people who had official connection with the property is not shown. One of the hearsays I could stand but two seems too many.

Hincks, *J.*: The book itself is not offered.

Mr. Martin: I am willing to offer it. I 1471
didn't want to load the record up.

Hincks, *J.*: The book is admissible if it wants to be offered.

By Mr. Martin:

Q. This book was kept by the bus despatcher in the course of his duties? A. The despatcher, yes.

Q. The despatcher? A. Yes, sir.

Mr. Martin: I offer the book in evidence.

Mr. Garfield: It is all right, Mr. Martin. 1472

(The book referred to was then received in evidence and marked "C. R. L. Exhibit 25.")

Q. (By Mr. Martin) The action indicated in the entries of the book with regard to withdrawing busses or whatever action taken on the report is noted there, was actually taken, is that correct? A. Yes, sir.

Q. In your opinion it was necessary to take that action? A. Yes, sir.

Q. With regard to the items listed in the index which has been made, referring to the par- 1473
ticular items in that book that we are interested in, the action during the month of July, 1936, was necessitated in your opinion by what? A. By the shortage of busses.

Q. If you had had more busses you would not have had to take the action indicated there? A. No, sir.

Q. In your opinion as an operator of busses was there a shortage of busses? A. Yes, sir, there was.

1474 Q. Have you a schedule showing how much that shortage of busses in Bridgeport amounted to? A. Yes, sir, I have.

Q. Is that the schedule? (Handing witness paper) A. Yes, sir, it is.

Q. This schedule says as of November 16, 1936. Is that correct? A. Yes, sir.

Q. It is intended to show the total busses required to discharge bus service in the Bridgeport area, is that right? A. Yes, sir.

Q. Does it also indicate the busses that were received by C. R. & L. on November 16, 1936?

1475 A. Yes, sir, it does.

Q. It also indicates the shortages in busses which in your opinion existed on that date when these busses were received by C. R. & L., is that right? A. Yes, sir.

Q. Were you also in charge of the Norwalk territory? A. Yes, sir Norwalk.

Q. Have you made a similar schedule for the Norwalk territory? A. I have.

Q. Is that the schedule for the Norwalk territory? A. Yes, sir, it is.

Q. That shows similar things, does it? A. It does, yes.

1476

Mr. Martin: I offer these schedules in evidence.

(The schedules referred to were then received in evidence, and marked "C. R. L. Exhibit 26.")

Q. (By Mr. Martin) Do you know, Mr. Crosson, of your own knowledge about complaints from the public during 1935 and 1936 with regard to the operation of the busses? A. Yes, sir, I do. I know that there were a number of complaints.

Q. How many do you suppose there were? A. I 1477
wouldn't know.

Q. Do you know how often they came in? A. Why, I would say almost daily.

Q. Almost daily? A. Yes, sir.

Q. What was the nature of the complaints? A. The complaints were that there should be more service, not so much crowding on bus operation.

Q. If you had had more busses, would that have reduced the crowding? A. Yes, sir.

Q. What effect would that have had on the schedule? A. It would have made for a better 1478
schedule and reduced the complaints.

Q. In what respect would the schedules have been better? A. We would have been able to furnish additional service—more seats—a steadier schedule.

Q. With a steadier schedule, with more frequent busses and busses running on time what effect, if any, would that have had on the patronage of the bus lines? A. It would have had a very good effect.

Mr. Garfield: Just a minute, if your honor please. It seems to me this is a little specu- 1479
lative.

Hincks, *J.*: Overruled.

Q. (By Mr. Martin.) Answer. A. It would have had a decidedly good effect.

Q. I know, but good is your conclusion. A. Yes.

Q. What would the result have been? A. The result would have been that it would reduce complaints from the patrons, and it would have made a more even service and more even headway.

1480 Q. Do you think you would have carried more passengers? A. No doubt. We would have carried more passengers also.

Q. Do you think passengers are more apt to use busses if they can count on their being on time? A. Yes, sir.

Q. Do you think that passengers are more apt to use busses if they run frequently? A. Yes, sir.

Q. Now, Mr. Crosson, do you remember your opinion as to the shortages in necessary busses in Bridgeport on November 16, 1936? A. You
1481 want my opinion as to what the shortage was in November?

Q. Yes. A. In Bridgeport the shortage on November 15, 1936 was nine busses.

Q. What was the shortage in your opinion in Norwalk? A. The shortage in Norwalk the same date was six busses.

Q. I show you a schedule purporting to be a summary of the Bridgeport and Norwalk bus situation, and ask you to examine it. I will ask you if that reflects your opinion as to the shortages and what reasonably should have been done? A. It does. The shortages show Bridge-
1482 port nine and Norwalk six, and that is my opinion as being the greater figure.

Mr. Martin: I ask that this paper be marked for identification.

(The schedule referred to was marked "C. R. L. Exhibit 27 for Identification.")

CROSS-EXAMINATION BY MR. GARFIELD:

Q. Mr. Crosson, this statement that has been marked Exhibit 27 for identification, in so far as it relates to Bridgeport and Norwalk, it

merely contains the same information that is in your Exhibit 26, does it not? A. Well, I think it does. 1483

Q. It does not purport to add anything new? A. I have a copy of the Bridgeport one, and I notice that is the same. I haven't a copy of the Norwalk one.

Mr. Martin: No, you are quite right, Mr. Garfield, it is merely a summary of the Bridgeport and Norwalk situation condensed in a tabulation.

Q. (By Mr. Garfield) When did the C. R. & L. abandon trolley service entirely? A. June, the 20th. That is Sunday—early Sunday morning. 1484

Q. June 20, 1937? A. 1937. That is, so far as I know in the division that I am located in—Bridgeport and Norwalk.

Q. Do you know about the balance of the territory A. No, I do not.

Q. Don't you know as a matter of general knowledge that C. R. & L. is not now operating any trolley properties? A. Yes, I understand that they are not.

Mr. Garfield: Mr. Martin, may the record show that June 20, 1937 was the final date of abandonment on the whole property. 1485

Mr. Martin: Yes, it may show that.

Q. (By Mr. Garfield) Are you giving better service now with busses than you formerly gave with trolley cars in places where you have recently changed over from trolley to bus service? A. We are giving more frequent service.

Q. Are you carrying more passengers? A. Yes, sir.

1486 Q. You feel that the policy of changing over from trolleys to busses has been vindicated? A. I do, depending on the circumstances.

Q. Taking circumstances in Bridgeport, was it wise to give up trolleys and go to busses? A. It was wise, I believe, to give up trolleys and go to busses, yes, sir.

Q. You expect to make more money that way, don't you? A. Yes, sir.

Q. What is the time of normal peak load on busses? A. 5:15 P. M. And you say normal peak? Top load?

1487 Q. Yes. Is there another peak in the morning rush hour, too? A. Yes, sir, there is.

Q. Is that peak heavier at one time of year than at another? A. Yes, it is.

Q. When is the heavy time? A. In the winter time.

Q. Is it a correct statement to say that in the morning and evening rush hours in the winter the demands for busses are heavier than at any other time, now eliminating emergencies? A. With the exception of in the summer time when there is a great demand for busses for people who want to go to the summer resorts.

1488 Q. Those are specially chartered busses? A. No, those are busses operated regularly.

Q. You mean by summer resorts points on your regular lines? A. Yes.

Q. Then do you change your former statement that the winter, morning and evening hours are the normal peak times? A. As I said, with the exception of weather conditions in the summer when the demand is greater for riding to the beaches.

Q. What kind of weather conditions would those be? A. Warm weather.

Q. In other words, on hot days in the summer 1489
when people all want to go to the beaches, you may have an extra peak load? A. Yes.

Q. What is your ideas as to wise managerial policy with regard to the number of busses which you should have on hand? Should it be enough to take care of those normal peak loads, or more, or less? A. It should be enough to take care of those normal peak loads plus busses that naturally would be required for servicing—overhauling and repairing.

Q. In other words, with a shop allowance? A. A shop allowance.

Q. You ought to have enough busses to take 1490
care of the normal peak load plus an ordinary shop allowance? A. Yes.

Q. If you had just that many busses would you ever be short? A. Such as a normal peak and a shop allowance?

Q. Yes. A. Yes.

Q. Why would you ever be short if you had that many busses? A. Probably to take care of some special movement where busses would be required above the amount that we had available.

Q. Would another sample be if a bus or two or three busses were in an accident and were out for 1491
longer than usual being repaired? A. Yes.

Q. Would it be wise in economical management to have enough extra busses so that you could take care of such emergencies, or would it not? A. It would be wise I should say.

Q. In saying that do you take into account the investment in these extra busses, the insurance, maintenance and other cost that would be involved in having them? A. Yes, sir.

Q. You think it would be wise management to have more busses than needed for normal peak

1492 requirements plus a shop allowance, even though you would have those for your overhead costs? A. I don't believe I understood your question before that.

Q. I will withdraw the question. Assume that on any given run a certain number of busses are required for normal peak times plus a certain additional number for a normal shop allowance. Would it be wise management to have more busses available on that route, because occasionally an emergency would arise when you could use more? A. No, I don't think so.

1493 Q. Then if you had the ideal number of busses available, you would occasionally have a shortage, wouldn't you? A. Yes, we would.

Q. And you would not consider that the management was inefficient if that were the situation? A. No.

Q. You would consider that the management was uneconomical if you had more than enough to take care of the normal peak plus the allowance for shop requirements? A. I would.

Q. Were you familiar with the other lines of The Connecticut Company outside of those under your direct jurisdiction? A. No, sir.

1494 Q. So that you don't know what the policy in other places was? A. No, I don't.

Cross-examination by Mr. Wells:

Q. What time of the day do you make these traffic checks usually? A. At various times of the day.

Q. Was it your custom to make them usually during the peak load periods? A. It was.

Q. Some of them were made during bad weather? A. Some of them made in bad weather; some of them made all day; some in the morning

rush hour. Maybe a period of three or four 1495
hours.

Q. But most of them were made during rush periods? A. Rush periods.

Q. Are you familiar with the state laws concerning the overloading of busses? A. Yes, sir.

Mr. Martin: I withdraw that question.

REDIRECT-EXAMINATION BY MR. MARTIN:

Q. Mr. Crosson, after November 16, 1936 how many new busses in addition to those taken over were put by C. R. & L. in the Bridgeport and Norwalk territory? A. Twenty-four. 1496

Q. Twenty-four new ones? A. Yes, sir.

Q. Did those run over the same route or other routes? A. Why, they were spread over almost all of the routes.

Q. All the bus routes? A. All the bus routes.

Q. After those twenty-four new busses were put on those routes, did you notice any increase or decline in the number of complaints received? A. Yes, sir.

Q. What happened? A. As a matter of fact we began to get commendable letters and telephone calls. 1497

Q. Commending the service? A. Commending the service.

Q. During the operation of the territory by The Connecticut Company can you ever remember a month when you got a compliment about the service from the public?

Mr. Garfield: I object, your honor.

Mr. Martin: That is all.

1498 By Hincks, J.:

Q. I understood you to say that after the C. R. & L. took over, it put on twenty-four extra busses in the Norwalk and Bridgeport lines? A. Put on twenty-four new busses.

Q. In addition to those—— A. They were not all an addition. Some of them replaced busses that we felt should not be operated.

Q. So that at that time certain of the busses which you re-possessed were retired from the service? A. Yes, sir.

Q. How many were retired from service? A.
1499 I don't know. There weren't very many of them retired at that time. Of course, they were still registered. I can recall two or three by number.

Q. After the transition was accomplished what was the total number of busses new and old that were operating in Bridgeport and Norwalk? A. The total number of busses old and new that were operating in Bridgeport and Norwalk?

Q. After the transition from The Connecticut Company to the C. R. & L. had been completed? A. I have one date here. November 24, 1936 there were seventy-eight; there were seventy-
1500 eight in operation.

Q. You don't know how many of those were new busses? A. Yes, sir. There were twenty-four of them that were new busses.

Q. Very well.

Recross-examination by Mr. Garfield:

Q. Twenty-four new ones on November 24, 1936? A. Yes, sir.

Q. How many are there operating there now? A. How many new busses?

Q. How many busses altogether operating in 1501
that territory now? A. I haven't the figure with me.

Q. What is the latest date as of which you have a figure? A. The latest date that I have is before the Connecticut Railway & Lighting Company took over the property.

Q. Before they took over the property? A. That's the latest date I have here. Oh, no. That is, you ask the number of new busses?

Q. No. I asked the total number of busses. A. The latest date that I have is the date that I just mentioned on November 24, 1936.

Q. Don't you know how many busses you are 1502
operating now? A. We had so many changes in the last month and new lines added that I could probably figure it up. Would you like me to?

Q. Well, you are the manager of that division. I think you should know. A. (After figuring) 134.

Q. The difference is due to the busses that you have put in to replace the trolleys, is it? A. Yes, sir.

Mr. Martin: What difference?

Q. (By Mr. Garfield) The difference between 1503
134 and 78. A. Oh, no, no. Since what date?

Q. I am taking the date you gave me, November 24, 1936, when you said you had seventy-eight busses including twenty-four new busses. You say you have now one hundred and thirty-four busses. So the difference between one hundred thirty-four and seventy-eight refers to busses that you put on to take the place of trolleys? A. Just a moment, please. No. Some of them are for additional service that is being rendered.

1504 Q. Can you tell us how many? A. Thirteen.

Q. How many busses did you put into operation on the lines where formerly there had been trolleys? A. You mean since November——

Q. At the time you gave up the trolleys in Bridgeport how many busses did you put on the routes that had been formerly served by trolleys? A. Forty-three.

Q. When were the twenty-four new busses put into operation in Bridgeport and Norwalk? A. It was on Monday, November 16, 1936.

Q. How many trolleys were replaced by the
1505 forty-three busses? A. Thirty-two.

By Hincks, *J.*:

Q. So if I have got this right, Exhibit 26 shows that C. R. & L. received from The Connecticut Company fifty-three busses in the Bridgeport district and nineteen in the Norwalk district? A. Yes, sir.

Q. That means a total of seventy-two? A. Yes, sir.

Q. After you had all your new busses and had them operating on November 24, you say there were seventy-eight in operation, is that right?
1506 A. Yes, sir.

Q. Why doesn't that indicate that the shortage was six instead of fifteen? A. I believe you have left out the Norwalk.

Q. Was that figure of seventy-eight busses on November 24 for Bridgeport only? A. No, sir, that was for Bridgeport and Norwalk.

Q. Exhibit 26 shows the busses owned as of November 15 in Bridgeport numbered fifty-three and in Norwalk nineteen, total seventy-two? A. Yes, sir.

Q. The difference between seventy-two and seventy-eight is six. In other words, on November 24 if you got your new busses you were operating only six more busses than the total number received. Doesn't that indicate that the shortage was six? A. It would indicate the actual operation, but it doesn't take care of shop cars and shop busses in either Bridgeport or Norwalk. 1507

Q. How many busses are required in that class? A. I would say a minimum of ten per cent.

Q. Very well.

1508

CHARLES H. CHAPMAN, Cheshire, Connecticut, called as a witness on behalf of the claimant, being first duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. MARTIN:

Q. What is your business, Mr. Chapman? A. Manager for the Connecticut Railway & Lighting Company, Waterbury and Derby.

Q. Waterbury and Derby? A. Yes.

Q. What are you manager of? A. The present operation is bus operation exclusively.

Q. Are you manager of bus operation? 1509
A. I am.

Q. In Waterbury and Derby? A. Yes.

Q. Have you been that since November 16, 1936? A. Manager of trolley and bus operation since November.

Q. But that has been your territory? A. That has been the same territory, yes.

Q. Since that date and before that what was your employment? A. Well, I might say that approximately 1894 I went to work in the trolley business, and for two years I worked intermit-

1510 tently, after that steadily. In 1899 I was appointed superintendent of the Middletown Street Railway, Middletown, Connecticut.

Q. Superintendent means the person who is in charge of the operation? A. The operation of trolleys. In 1907, July, I was transferred to Bridgeport as superintendent. At that time there was no title of manager. The superintendent was in charge of the operations. Some two years later——

By Hincks, J.:

1511 Q. What company was that in Bridgeport? A. The Connecticut Company.

Q. Is that when you entered the service of The Connecticut Company? A. No. What happened was that The Connecticut, with which I was identified—the Middletown Street Railway Company became a part of The Connecticut Company.

By Mr. Wells:

Q. In 1906 or prior to 1906? A. It became part of The Connecticut Company.

Q. Don't you mean the Consolidated Railway
1512 Company? A. It may be, but what has turned out to be The Connecticut Company. And going to Bridgeport in 1907 and in 1909 I was made manager in Bridgeport and Norwalk. In 1918, January, I was transferred to Waterbury and as manager in Waterbury, and about 1933 the district was added—the Derby, Ansonia district was added, and I became manager of Derby and Ansonia as well as Waterbury, and I am still in that position, and am now working for The Connecticut Railway & Lighting Company, and up to November 15 (1) for The Connecticut Company.

By Mr. Martin: 1513

Q. When were the first busses running in Waterbury by The Connecticut Company, do you remember? A. May I refresh my memory with data I have?

Q. Yes. A. The start of the first route as near as I can determine from this data is October 7, 1921.

Q. You were in charge of those? A. I was.

Q. Do you know when the busses completely superseded the trolley cars in Waterbury? A. Yes, sir.

Q. When? A. On June 20, 1937. 1514

Q. Have you been in charge of the Waterbury district since the C. R. & L. took it over on November 16, 1936? A. I have.

Q. How long before that were you there? A. Since 1918.

Q. As manager for The Connecticut Company? A. Up until November for The Connecticut Company and after November for the C. R.——

Q. Yes. Do you know how many busses were received by C. R. & L. in the Waterbury district on November 16, 1936? A. There were eleven additional new busses.

1515

Q. No, no. How many busses were turned over to the C. R. & L. on November 16, 1936? A. Pardon me. I thought you said "received." There was thirty-seven busses, properly C. R. & L. busses, turned over. There was a total of forty-two, of which—that is, turned over for the operation—of which three were rented busses, and two were busses retained by The Connecticut Company for their own operation in the Waterbury territory.

1516 Q. Then the answer is thirty-seven? A. The answer is thirty-seven.

Q. That's right. Now, you are familiar with the operation of those busses by The Connecticut Company in the winters of 1934 to 1935 and the winter of 1935-1936; isn't that so? A. That's true.

Q. Were those years more or less typical of the years previous to them as far as bus operation went? A. No, the winters vary. The winter of 1935-36 was a normal winter. The winter—the preceding winter—was normal. The winter be-
1517 fore that was very bad, unusual, and last winter was very light.

By Mr. Garfield:

Q. What was very light? A. The winter conditions. It was a very open winter.

By Mr. Martin:

Q. Did you have traffic checks made on the busses in your territory for 1935 and 1936 or 1934? A. We have a regular system of reporting the number of passengers carried on various
1518 trips on busses at all times, and we had them during those winters just the same as any other time.

Q. The answer is yes? A. Yes.

Q. Have you got any copies of those traffic check-reports? A. I have the checks themselves.

Q. May I see them? A. The checks are of two sorts, the passenger count and the bus service reports. The passenger count checks are the number of passengers carried on certain trips, on certain busses, on certain lines at certain times of day, of course. The bus service reports con-

cern shortages of busses and bus conditions 1519
shown on the dates of the reports.

Q. These papers that I hold in my hand appear to be bus service reports for January, 1935, February, 1935, March, 1935, December, 1935, January, 1936, February, 1936, March, 1936. A. Yes, sir.

Q. Who made these reports? A. Bus service reports are made largely by despatchers; once in a while by a car house foreman who has charge of the garage and car house and the assignment of busses.

Q. Is it the duty of the despatchers and the 1520
car house foremen to make these reports? A. It is.

Q. Are they made to you? A. They are.

Q. These are original reports? A. They are.

Q. Which were made to you on the date which they bear, is that correct? A. Yes.

Q. These were all made during 1935 or 1936? A. Those were all made during the operation of the properties.

Q. By The Connecticut Company? A. That is correct.

Q. In general what do those bus service reports deal with? A. The bus service reports deal with 1521
conditions existing after various times. The complaints are received by despatchers or other car service employees first concerning service and recorded and reported to me on the part of the employee that certain conditions could not be successfully coped with, with the report that there were no further busses available; reports of heavy riding here and there and what happened in connection with it; people left on the routes, unable to take them on the busses and all sorts of service conditions—unsatisfactory

1522 service conditions caused by the very acute shortage of busses that existed in Waterbury during those winters.

Q. Can you say, Mr. Chapman, that those reports which you show me are typical of reports received during the years 1934 and 1935 and 1936? A. They are, excepting that in 1936—the winter of 1935-1936.

Q. The answer is yes? A. Anything in 1936 later conditions aren't so bad. They taper off because of the fact that the winter conditions were not so severe.

1523 Q. I don't think I quite understand what you mean by that. A. I can explain that, Mr. Martin, in this way, I think, quite logically. The bus business—the transportation business, both trolley and bus—increases materially nowadays during the winter months. During the summer months it is not as great. The number of busses necessary to satisfactorily take care of the public during the winter is materially more than during the summer months. It is necessary for each transportation company to have a greater number of busses on hand than it can use to advantage during the summer period—
1524 that is, continuously use, but during the winter period those busses can be used to good advantage.

Q. These reports which you show me with regard to bus service, are they typical of the months during the years 1936 and 1935? A. They are.

Q. You didn't select them because they were favorable or because they were unfavorable? A. I selected some and made those red marks on there so that anyone could see the conditions quickly. They are typical of all the conditions.

Q. But all the reports are here that were made 1525
for any particular month? A. No, sir, they are not all there.

Q. Then there are other bus service reports which in your opinion have nothing to do with a shortage of busses that are not included here? A. That's true.

Q. These are the reports which on looking over all the reports you considered had some evidentical value perhaps as to whether or not there was a shortage of busses? A. That's true.

Mr. Martin: I offer these reports in evidence. 1526

(The reports referred to were then received in evidence and marked "C. R. L. Exhibit 28.").

Q. (By Mr. Martin) Now, Mr. Chapman, did you or the men under you whose business it was to receive complaints, receive the complaints during 1935 and 1936 as far as you can remember from any of the public about the bus service? A. Unfortunately, yes. Complaints were received by telephone and by letter and appeared in the newspapers to a certain extent. The story is 1527
rather well described in this series of letters and my reports to the management concerning the conditions.

Q. What period do those reports cover? A. Well, they start, sir, in December, 1933, and I think the last is 1936—August, 1936.

Q. From December, 1933 to August, 1936? A. Yes.

Q. These are copies of reports that you made to Mr. Bennett, the manager of The Connecticut Company? A. That's true.

1528 Q. Do they deal only with the bus operation in your territory? A. Yes, they deal with the subject of the shortage of busses.

Q. Just with busses? A. Yes.

Q. Were all these letters sent by you to Mr. Bennett? A. They were, and some that he sent to me.

Q. Mr. Chapman, these copies of letters which I have here are copies of letters which you wrote to Mr. Bennett or else they are letters which Mr. Bennett wrote back to you? A. That's true.

Q. With regard to the bus service in your ter-
1529 ritory between December, 1933 and August 28, 1936? (No answer audible)

Mr. Martin: I offer them in evidence.

(The copies of letters referred to were then received in evidence and marked "C. R. L. Exhibit 29.")

Q. (By Mr. Martin) Did you get any letters from the public, Mr. Chapman? A. We did. I haven't them here.

Q. Haven't you even got the letter from the school superintendent? A. That wasn't a letter,
1530 Mr. Martin. That was a telephone conversation, and there is a letter in that file to Mr. Bennett which refers to that and tells all about it.

Q. This is my mistake. I thought it was a letter. Was the telephone conversation held with you? A. Yes, sir.

Q. Between you and who was the gentleman? A. Mr. Thomas Condon, superintendent of schools in Waterbury, called me up on the date mentioned in that letter, and said that the conditions as to the scholars getting in to school on time were getting so acute that the schools—

many of them in Waterbury—could not start their 1531
sessions on time, and it was due to lack of busses on bus lines. And he wanted to know what could be done about it. It was, of course, in the middle of winter, a very difficult time, and with no additional equipment nothing much could be done about it. But it did show how the school children even were dependent on our service.

Q. That I think you reported to the general manager of The Connecticut Company in a letter dated February 18, 1936? A. The letter is there; I won't say the date, but I did report it.

Q. But that was the winter that this occurred? 1532
A. Yes, sir.

Q. In January, 1936, do you know how many busses were being operated in the Waterbury district by The Connecticut Company? If November, 1936, is a more convenient date—— A. I guess I have them here. January, 1936 we ran around—well, we started on the 1st of January we had a total of forty-four busses in Waterbury, of which two we borrowed. So we had two—forty-two, and I guess three rented ones.

Q. Whom did you borrow them from? 1533
A. One from Hartford and one from Bridgeport.

Q. Whom did you rent them from? A. They are rented from the County Transportation Company.

Q. Do you know what the average number of busses operated during the year 1936 in the Waterbury district was? Q. During the year? A. Well, up to November 16, 1936. A. It ran not far from forty busses, Mr. Martin.

Q. When the C. R. & L. took this division over on November 16, 1936, were new busses added? A. Yes.

1534 Q. How many, do you know? A. On November 16 there were eleven added and on November 23 three.

Q. Three more? A. Three more. Those were new. December 6 two; January 5 one; January 29 two; March 11 two.

Q. Well, just a moment. Were those all run on the previous bus routes? A. Up until April. Those that I have mentioned were all operated on the routes that we were already operating as bus routes.

Q. Well, how many? A. My substitution—my
1535 first change came April 4, 1937.

Q. What I want to know is how many busses C. R. & L. gave you to cover the same routes that The Connecticut Company was operating busses over? A. They gave us about fourteen more busses than we had before to cover the same routes.

Q. Do you remember the number of busses that were turned over to the C. R. & L. by The Connecticut Company on November 16, 1936? A. That was thirty-seven.

Q. Thirty-seven were turned over? A. Yes.

Q. They had been operating somewhere around
1536 forty and fourteen new ones went into operation, is it fair to say, promptly after November 16? A. Just as fast as they came, sir.

Q. In your opinion as an operating manager, Mr. Chapman, were there enough busses being operated by The Connecticut Company during 1936 in that territory, I mean, considering the routes that they were following and the passengers that they were carrying? A. I feel very keenly that there were not enough busses being operated.

Q. Did you do anything about it? A. Why, 1537
I asked for more busses all the time, on the telephone and by letter.

Q. Had you been doing that for some time? A. Yes, sir.

Q. But up to the end in your opinion you still had not sufficient busses? A. We had not had sufficient busses in Waterbury in three or four years, sir.

Q. Do you think you have got sufficient busses now? A. We have not for the next winter if we continue to increase our business in the ratio that it is going.

Q. I show you a memorandum which has been 1538
prepared covering the Waterbury district. You have seen that before, I think, Mr. Chapman? A. Yes, sir, I helped prepare it.

Q. You helped prepare it? A. Yes, sir.

Q. Does that memorandum reflect accurately your opinion as to the shortages of busses in the Waterbury district at the end of the period of operation by The Connecticut Company? A. At the time this was prepared in May that was a very accurate statement. Conditions have indicated that it was perhaps a very conservative statement. Conditions since then have indicated 1539
that we might have done more business had we had more busses.

Q. You prepared this statement in May, and since that date by reason of perhaps better schedules or better busses—— A. By reason of additional new busses more frequent headway, better service all around, sir. Conditions indicate that that statement was very conservative.

Q. In other words, it would have been reasonable to say that the shortage would even have been greater? A. We could have used more

1540 busses, and that means that the shortage was greater.

Q. And with more profit? A. That's right.

(The memorandum referred to was then received in evidence and marked "C. R. L. Exhibit 30.")

Q. I show you Exhibit 27 for identification, and ask you to examine the Waterbury item in that and tell me if that is an accurate summary of the report of your own which has just gone into evidence? A. It is.

Q. Thank you. Mr. Chapman, is there any-
1541 thing about the operation of busses and the importance of schedules or the importance of having first class coaches that I haven't asked you that you think the court ought to know, because you are the witness that knows as much about this matter as anyone, and I don't know very much about it? If you think the court should be informed, tell us anything else that occurs to you. A. Perhaps only one point. It has been amazing to me that people should prefer to ride on busses as much as they do over the trolley car. I knew that to be so, but I didn't be-
1542 lieve it was so to any such degree as it apparently is so, when it is demonstrated through a sufficient number of convenient, comfortable vehicles, as we have been able to do recently in the Waterbury district.

By Hincks, *J.*:

Q. You think that preference is due to the fact that the busses have perhaps a smaller capacity unit per unit than the trolley and therefore perhaps a shorter headway, or do you think it is due to the relative comfort of the two

vehicles? In other words, if you could run trol- 1543
ley cars at as frequent intervals as you can busses, do you think the traveling public would still show the preference you have noticed for the busses? A. As an old trolleyman I am afraid they would. It has fooled me. They seem to like the bus, and they like it more than I thought they did. I knew there was more of it liked it than didn't, but I find the ratio is greater than I had any idea it is.

CROSS-EXAMINATION BY MR. GARFIELD:

Q. Mr. Chapman, you consider you are a 1544
pretty good trolleyman, don't you? A. I have had a bit of experience.

Q. And you are fast becoming a pretty good bus man? A. I have a lot to learn in the bus business.

Q. You don't yield to anyone that you know as an expert on trolley and bus operations, do you? A. Oh, yes, I do.

Q. Anybody that has testified here today? A. On operations.

Q. Anybody that has been mentioned here to-
day? A. I am afraid I couldn't answer that ques- 1545
tion. I cannot carry in my mind parties who might have been mentioned.

Q. Well, I won't press that, but isn't this the fact, that several years ago you would not have believed that as much more money could be made out of bus properties than out of trolley properties, as you now find is the fact? A. That's true.

Q. Now, at that time you considered that your opinion was based on sufficient expert knowledge of the whole field, didn't you? A. Yes.

1546 Q. You don't feel in looking back over it that you were guilty of any errors of judgment on the basis of conditions as you then knew them, do you? A. The question is personal, or are you referring to the company?

Q. Well, take it personally first. A. No, I think I have had a fair knowledge and viewpoint of the conditions as far as I could get it.

Q. At that time you didn't feel that the company was wrong in not turning over from trolleys to busses more rapidly than they were doing, did you? A. At what time?

1547 Q. Well, let's see. Ten years ago? A. No.

Q. Was there any time prior to last November when you felt that the abandonment of trolleys should be proceeded with more rapidly than the company was proceeding with it? A. Yes, sir.

Q. When was that? A. I became convinced about four or five years ago that the company should adopt a policy of regular abandonment.

Q. Didn't the company adopt such a policy? A. It did but it was knocked into a cocked hat by the depression, sir, and everything went sideways, and we were just doing things that were costing a lot of money in one place and not ac-
1548 complishing anything in another.

Q. That was due to the depression and financial exigency? A. Due to changes, yes.

Q. What was the policy that the company had adopted for changing over before the depression interfered with it? A. I am not familiar with the details, but it is my understanding that they had adopted a policy of some sort relative to bus substitution.

Q. Actually they were abandoning trolleys and substituting busses here and there from time to

time, were they not? A. Only as they were forced to do so from new paving programs or new bridges. 1549

Q. Why did a paving program force a change? A. The municipality by the state might decide to pave a certain area, a certain street or highway. The proportion of expense for The Connecticut Company including its proportion of paving and rail renewal might be quite a number of thousands of dollars. The company decided that rather than do that they would put that money into busses and change the method of operation.

Q. You considered that that was wise to do at the time that they did it? A. I think so. 1550

Q. Would it have been wise to make those changes faster than they were made? A. I have no accurate knowledge of the general finances of the company.

Q. When you say—— A. When I said yes, I meant just from my own viewpoint as an operating manager.

Q. Well, any way, that viewpoint is based upon operating results which you have seen since the abandonment of the trolley lines? A. No, the operating results which I have seen recently are, as I say, very gratifying, but before that the bus 1551 offered an excellent field for the development of new territory, which was not exercised.

Q. When the trolley property was in reasonably good operating condition and there were no unusual expenses such as paving program or a bridge to be replaced, did you at any time urge that such a property should be transferred to busses? A. I don't think so.

Q. But if you had known as much as you now know about the result of transferring to busses, would you have urged such transfers? A. I would.

1552 Q. You said a moment ago that you were amazed at the results which have flowed from the abandonment of trolleys in your territory. You mean from the recent abandonment since the C. R. & L. took it over? A. I think I said that I was amazed at the result of introducing the new motor busses. Am I not right?

Q. Well, I thought you said as a result of changing over from trolleys to busses. But what was your amazement caused by? A. As I just mentioned, having an adequate number of vehicles and having them new and comfortable seemed to have affected the public very favorably.

1553 Q. Is it the newness of the vehicles or the fact that they are busses instead of trolley cars that makes the difference? A. I think both factors have something to do with it.

Q. So that you feel that the C. R. & L. property under your jurisdiction is now in a very much better condition than it was a year ago or, say, two or three years ago under The Connecticut Company jurisdiction, do you? A. I feel that the bus situation is materially improved.

Q. Do you feel that the number of passengers and the total amount of business has been greatly 1554 increased through the introduction of an adequate number of busses? A. Yes.

Q. And that has happened since you put on these new busses either in replacement of old busses or in replacement of trolley cars? A. That is true.

Q. Now, in introducing your Exhibit No. 28, which was the bus service reports, you said that you included all those which showed the complaints of shortages of equipment? A. That's right.

Q. So that we may infer that over the period 1555
covered there were no other complaints of that sort? A. That had a reference to that subject, yes.

Q. Yes. A. May I say that I did not include the passenger count reports. They are right here, all having a bearing on the same subject and showing the checks on the street.

Q. I think you also said that you considered the bus service reports to be typical of the conditions prior to the winter of 1936? A. 1936 and 7, yes.

Q. But you haven't introduced any similar 1556
reports showing complaints during the winter of 1936—1937? A. I think you will find some of those reports do have a bearing on that winter. But my point was that the winter of '36—'37 was an open winter. There weren't so many complaints.

Q. But there were still some complaints? A. There were still some complaints, yes, and we were still short of busses through that time, too.

Q. Are you still having some complaints now? A. We don't have that sort of complaint. We will always have complaints in the transportation 1557
business, of course.

Q. You don't look forward to a millenium when you have new busses, do you? A. There will be no millenium.

Q. Those reports that you introduced are only for the winter months, and consequently it is not surprising that you don't show any complaints for the spring of 1937, because you don't show any in the spring of 1935 and 1936? A. Well, not after March.

1558 Q. No. But you don't look forward to a complaintless winter in 1937-1938 even with your new busses? A. No, sir.

Q. You said that trolleys were completely abandoned in Waterbury on June 20, 1937. Was that also the date when the abandonment in Derby took place? A. The last abandonment in Derby. The first one in Derby—The Derby local, that took place on March 21, 1937.

Q. But June 20, 1937 was the last date of any trolley operations in your territory? A. That's true.

1559 Q. At the time the property was transferred from the C. R. & L. to the Consolidated Company in 1906, there were of course no busses, were there? A. No, sir.

Q. Then you were busy on trolley properties only? A. That's right.

Q. Were there complaints at that time? A. Yes, sir.

Q. In Bridgeport did you have a lot of complaints? A. In 1906?

Q. I think you went to Bridgeport in 1907. A. That's what I had in mind.

Q. You did have complaints there then?

1560 A. Yes, yes.

Q. Of the inadequacy of the trolley service? A. No, it was not that. A little difficulty relative to power.

Q. And you had complaints ever since? A. Not of the sort that I testified about here. But there will always be complaints in the transportation business. We carry thousands of people and if we are able to satisfy 99 9/10 of them we would still have complaints, or I think it will be true.

CROSS-EXAMINATION BY MR. WELLS: 1561

Q. You testified about the substitutions of bus for trolley service. Were there any bus routes inaugurated where there had been no previous rail service in your territory? A. Oh, yes.

Q. Quite an expansive addition? A. The first, second, third and 4th and 5th routes started in the Waterbury territory. Those were routes in which there were no trolleys. The sixth is a trolley substitution, as is the seventh and also the eighth. The ninth is also trolley substitution. The tenth is a new route; the eleventh is trolley; the twelfth is trolley; the thirteenth is a 1562
new route; the fourteenth is trolley; the fifteenth, trolley; the sixteenth is a new route; the seventeenth is trolley; the eighteenth, nineteenth, twentieth, twenty-first and twenty-second are trolley substitutions.

Q. Do you know the approximate mileage of the new routes in Waterbury? A. No, not off hand, sir.

By Hinckes, *J.*:

Q. I don't understand whether those trolley substitutions were made before or after November, 1936? 1563
A. The bulk of them were made before, but since November, 1936, your honor there are one, two, three, four.

RECROSS-EXAMINATION BY MR. GARFIELD:

Q. Which are those? A. Those are the Town Plot-Lakewood line April 4, 1937; Oakville-Watertown May 23; Willow-Overlook May 23; Waterville May 23 and Waterbury-New Haven via Derby June 20, 1937.

1564 RECROSS-EXAMINATION BY MR. WELLS:

Q. Those are trolley substitutions? A. Those are (Reading)

Q. What are you reading from? A. Just a memorandum of my own of the list of when each bus line was started.

Mr. Wells: You have referred to this memorandum in the record which was explained with numbers to the memorandum, Do you have any objection to its going into that in order to identify routes?

Mr. Martin: No.

1565 RECROSS-EXAMINATION BY MR. GARFIELD:

Q. Mr. Chapman, Mr. Bennett tells me that when you said Waterbury-New Haven, you should have said Naugatuck-New Haven. Is that so? A. Well, true as far as the route goes, but as far as the operations of this Waterbury—we start the operation from Waterbury to New Haven. We made no change in the local service and added the through service to it, so it is really true so far as the operation goes that it starts from Waterbury to New Haven.

1566 (The list of routes referred to was then received in evidence and marked "C. R. L. Exhibit 31.")

PAUL A. RUST, Bridgeport, Connecticut, called as a witness for the claimant, being first duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. MARTIN:

Mr. Martin: I offer in evidence the original letter dated July 20, 1936 from Mr. Bennett,

General Manager of The Connecticut Company, to Mr. Bodine, President of the C. R. & L. 1567

(The letter referred to was then received in evidence and marked "C. R. L. Exhibit 32.")

Q. What is your occupation? A. General superintendent of Connecticut Railway & Lighting Company.

Q. Does that mean that you are general superintendent in charge of operations? A. That's right.

Q. Your office is in Bridgeport? A. That's right. 1568

Q. I show you a memorandum which was compiled with regard to the bus situation in New Britain. Did you have that compiled? A. I did.

Q. Does that represent the number of busses in your opinion which is short or a surplus in New Britain? A. That is correct.

Q. As an actual fact what does that memorandum say that answer is? A. It indicates a shortage of one bus.

Q. Of one bus? A. That is correct.

Mr. Martin: I offer that in evidence. 1569

(The memorandum referred to was then received in evidence and marked "C. R. L. Exhibit 33.")

Q. (By Mr. Martin) Now, Mr. Rust, I show you C. R. & L. Exhibit No. 27 offered for identification, which contains summaries of the reports covering the territory of Bridgeport, Norwalk, Waterbury, and New Britain testified to by Mr. Crosson and Mr. Chapman, and New Britain by this last report of yours which has gone in

1570 evidence, and ask you if that was drawn up under your supervision? A. It was.

Q. This is a summary of the other reports, that have been put in evidence? A. That is correct.

Q. What does this show as to total shortage of busses in connection with the other reports?

A. There was a total which shows a shortage of twenty-one busses over actual line requirements with an additional shortage, when you allow for shoppage or spares, it shows a total shortage of thirty-six busses.

Q. Are those busses divided into categories of some kind? A. Yes. We have an allowance here
1571 of thirty-four 25-passenger busses and six 30-passenger busses, and we have subtracted eight 20-passenger busses, which we figure is in excess of actual requirements. In other words, we were assuming—we figure our requirements by capacity of busses in our properties we had eight passenger busses more than we figured we needed.

Q. That is to say the conclusion is that of the busses turned over on November 16, 1936 to C. R. & L. there was a shortage of how many 25-passenger busses? A. Thirty-four.

Q. 30-passenger busses were short? A. Six.

1572 Q. A surplus of some remain? A. Eight.

Q. What was the other short? A. 20-passenger.

Q. A surplus of eight 20-passenger busses, is that right? A. That's right.

Q. Are you familiar with the cost of the 30-passenger busses? A. Yes, sir.

Q. And of the 25-passenger busses? A. Yes, sir.

Q. How much does a 25-passenger bus cost? A. Approximately $6800.

Q. Is that after all discounts have been taken off? A. Ready for the road.

Q. How much, then, would thirty-four 24-pas- 1573
senger busses cost? A. $231,200.

Q. How much does a 30-passenger bus cost? A. Approximately $9,000 each or $54,000.

Q. $54,000 for how many? A. For six. Total of $285,200.

Q. You have credited against that—— A. Eight 20-passenger busses at $4500, or $36,000.

Q. That leaves a balance of how much? A. A balance in money of $249,200.

Q. You estimate these eight 20-passenger busses how? At $4500 each? A. Well, that is the approximate value of them. We purchase busses and I know roughly what they run. 1574

Q. Well, does a 20-passenger bus cost $4500 new? A. That's right.

Q. New. A. That's right.

Q. So that you have taken the value of 25-passenger busses new, of 30-passenger new, and you have given a credit for the overplus of the 20-passenger busses also at their cost when new? A. That's correct.

Q. That results in a balance of, $249,200 doesn't it? A. That's correct.

Q. Why didn't we depreciate this at fifty per cent? A. We are actually short those busses, and 1575
we have to buy them to fill out our requirements. It is not a case of depreciating it at all. It is something we didn't get that we should have.

Q. Can you think of any good reason why we should have them new? A. We had to buy new ones to take their place.

Q. If they had been depreciated fifty per cent and had been turned over to us in that condition, I suppose we would have been satisfied, wouldn't we? A. I imagine we would, yes.

1576 Q. And if they were depreciated fifty per cent, the balance due after the adjustment which you have made would be one half of $249,200 or $124,600. That is correct, isn't it? A. That is correct.

Mr. Martin: I now offer Exhibit 27 in evidence.

Mr. Garfield. No objections.

(The paper referred to, having previously been marked "C. R. L. Exhibit 27 for Identification," was received in evidence and marked "C. R. L. Exhibit 27.")

1577

Walter Carr, Fairfield, Connecticut, a witness called in behalf of the claimant, being first duly sworn, testified as follows:

Direct-examination by Mr. Martin:

Q. Mr. Carr, you are vice-president of the C. R. & L. and in general charge of all its operations in Connecticut? A. C. R. & L.

Q. C. R. & L., I mean, and your office is in
1578 Bridgeport? A. Yes.

Q. Have you had that position since November 16, 1936? A. Yes.

Q. How long before that? A. I believe the date was August 15, 1936.

Q. Have you made an investigation into the property that in your opinion should have been returned to the C. R. & L. on November 16, 1936? A. Yes.

Q. Are there certain bus routes which in your opinion should have either been returned or else divided between The Connecticut Company and

the C. R. & L., but which have been wholly re- 1579
tained by The Connecticut Company? A. Yes.

Q. Have you examined into the history of those bus routes? A. I have not personally, but it has been done under my direction.

Q. You have checked the reports that have been made to you and read them over? A. Yes, I had seen the original bus route certificate.

Q. Looking at the memorandum which you have made for me, the first of the disputed bus routes is called the Bridgeport-New Haven bus route? A. Yes.

Q. Can you describe where that goes? A. As 1580
operated under the last amendment, No. 88, the Public Utilities Commission Certificate No. 200, the route commences at Elm and Temple Streets, New Haven. Then via Temple Street, Chapel Street, College Street, George Street, Broad Street, Davenport Avenue and Milford Turnpike by the Boston Post Road, through Milford and Devon to Bridgeport via Connecticut Avenue, Stratford Avenue and Water Street and to a point near Gold Street, returning via Water Street, Stratford Avenue and Connecticut Avenue, through Devon and Milford, Milford Turn- 1581
pike, Davenport Avenue, Broad Street, George Street, College Street, Elm Street, Temple Street, New Haven.

Q. Have you got a map, Mr. Carr, that shows that? A. (Producing a map) This map only shows as far as Milford to up to the Housatonic River.

Q. Where is the route here that you are talking about, Mr. Carr? A. The route is not entirely shown. The part up here is in New Haven; it is only shown on this map as far as the West Haven town line substantially, shown running

across the towns of Orange and Milford into the Milford center over as far as the Housatonic River.

Q. This map represents a large part of the route that you claim under this title of Bridgeport-New Haven route, is that right? A. It covers practically all of it except the part in the city of Bridgeport, which is largely now in the name of C. R. & L.

Mr. Martin: I offer this map in evidence.

(The map referred to was then received in evidence and marked "C. R. L. Exhibit 36.")

Q. (By Mr. Martin) Mr. Carr, looking at Exhibit 36, the route you are talking about is the middle one that goes from the letter "E" on the right-hand edge and comes to where the letter "S" is on the other side? A. Yes, approximately.

Q. How much of this route do you think in your opinion ought to be turned over or allocated as an addition to the C. R. & L.? A. I believe that the part of that route lying substantially west of the Orange Center Road should be the C. R. & L. property.

Q. Is the Orange Center Road the road which connects with what appears to be the main line of this route? A. Yes.

Q. I see on this exhibit the word "boundary" written opposite the letter "P" in the right-hand edge, and again the word "boundary" in the upper part of the map opposite the figure "11" on the upper edge. What is that arrow intended to indicate? (Pointing) A. That arrow indicated the approximate location of the boundary

on the trolley property for trolley line which 1585
prior to 1906 operated between Derby and New Haven.

Q. Isn't that the exact and precise location? A. As near as I can get it on the map. The boundary is more clearly described in an old contract or agreement. It is approximately six hundred feet east of the Orange Center Road where it intersects with the Derby-New Haven road.

Q. Why do you say approximately? A. I will have to read this old contract.

Q. Isn't this arrow put in at precisely the place which in the opinion of the maker of this 1586
map was referred to in that agreement? A. Yes.

Q. Then that in your opinion is the exact place, isn't it? A. Yes.

Q. Not in the approximate place. All right. A. I might also say that it coincides with the ends of the tracks which were turned back to us November 16, 1936 by The Connecticut Company as near as we can put it on a map.

Q. Looking at this north boundary arrow, that indicates the division between what? A. Between the property of The Connecticut Company and the property of the C. R. & L.

Q. That is to say that east of that arrow that 1587
route belongs to The Connecticut Company and west of that arrow—that's a bus route? That is what it is, isn't it? A. Well, it happens to be today but November 16 it was a trolley line.

Q. I see. Well, then, that bus route at and west of the boundary belongs to the C. R. & L.? A. Yes.

Q. As to that the two companies are in accord? A. Yes.

Q. Looking at the arrow opposite the letter "P" on the right-hand edge of the map, what

1588 does that arrow signify as the boundary between? A. That arrow indicates Abigail Street, Woodmont, which has been the boundry between the Bridgeport and New Haven trolley line prior to 1906 separating the property of the C. R. & L., which lies substantially west of that line, and which is indicated in red on the map, and I believe the property of the West Shore Railroad Company, which I am not sure whether it is now the property of The Connecticut Company or not, but it has at least been operated by The Connecticut Company as a trolley line from New Haven to Woodmont to the town of Milford.

1589 Q. Is this a trolley line now, Mr. Carr, or is it a bus route? A. The C. R. & L. portion of the route is a bus route. I think The Connecticut Company is still operating trolleys, although I believe they are about to abandon it.

Q. In other words, the C. R. & L. busses came along this shore road right up to the point where the arrow indicates? A. Yes.

Q. C. R. & L. has owned that route and the franchise since 1906 when the original lease was made? A. Yes.

Q. This line which has been drawn in ink on
1590 this map connects the north boundary with the south boundary, does it not? A. Yes.

Q. It is your contention that the territory lying west of that line is C. R. & L. territory, is that right? A. Yes.

Q. And that the territory lying east of that line is not to be considered C. R. & L. territory? A. Yes.

Q. Do you know when the bus route which is marked in red was laid out? A. Yes. If I may refer to my notes? This route was originally established July 15, 1921 operating over

substantially the streets that I read above as far 1591
as the easterly side of the Housatonic River Bridge in Devon, which is west of the portion we are discussing. On July 8, 1923 this line was extended from the Housatonic River to the Plaza in Bridgeport. On November 28, 1921 an additional route was established over substantially the same streets in New Haven and up to Orange Road in the Milford Turnpike.

Q. That is the one that runs north? A. Yes, at the intersection of the two road lines in the center part of the map.

Q. It runs up to the part marked Orange 1592
Center in the middle of the map? A. Well, that was extended up to Orange Center on July 15, 1922—over the Orange Road to Orange Center. I might say that this information was obtained from the Public Utilities Commission records.

Q. Now The Connecticut Company is operating the entire route in red? A. Yes, and in addition to that they are operating all the way through Milford Center and over the so-called old Milford Road and the Post Road through to the center of Bridgeport.

Q. Why isn't this part of the route marked in 1598
red, too, this additional part that you have just mentioned? A. It might just as well be.

Q. Is the C. R. & L. receiving any of the net avails made by The Connecticut Company from the operation of any of this route shown on the map? A. No, not from the center of Bridgeport to the center of New Haven.

Q. That is to say, beginning at the letter "E" up in the right-hand edge and beginning at Orange Center in the middle of the map and coming on down through Milford and going on to Bridge-

1594 port across the river at "S" in the left-hand side of the map, that entire route is being operated by The Connecticut Company without any of the avails or net operating income being accounted for to the C. R. & L.? A. That is correct.

Q. And it goes to the center of Bridgeport? A. It goes to the center of Bridgeport.

Q. Your contention is that the two boundary arrows that we were speaking of establish the monuments from which the territory of the C. R. & L. can be ascertained, and to that end you have connected them by a straight line; and it is
1595 your claim that the territory west of that straight line shown on the map is C. R. & L. territory, and that C. R. & L. ought to have allocated to it the part of this through route to Bridgeport lying west of that line, is that correct? A. Yes.

Hincks, *J.*: Would it be easier if there is any cross-examination on this route?

Mr. Garfield: Yes.

CROSS-EXAMINATION BY MR. WELLS:

1596 Q. When you speak of the boundary of the C. R. & L. here and the boundary there where the two green arrows are, what do you mean? A. I mean that that is the division of the physical property between the two companies at that point.

Q. In other words, that is simply the terminus of a trolley or bus line of the C. R. & L. in each case? A. The ownership of the rails and franchise of one company stops on its own side of that line, or it did at the time of the lease.

Q. So all we have done is draw a line between 1597
the terminus of the northerly line here and the terminus of the southerly line here, and wherever that line intersected this bus route marked the place where that bus route belonged to C. R. & L.? A. In my opinion, yes.

Q. You speak of C. R. & L. territory. Just what do you mean by that? A. May I read a quotation from the lease which I have here?

Q. Well, now, I would rather have you answer my question. A. Well, as I recall the wording of the lease——

Mr. Garfield: Well, you may look at that. 1598

Q. (By Mr. Wells) You used the word "territory." I am asking you your opinion as to the word "territory." A. The word "territory" appears in the quotation from the lease, if I may read this.

Q. Well, the lease is in evidence. A. You are asking me how I got out this——

By Hincks, *J.*:

Q. No. He asked you what you meant by C. R. & L. territory. Do you mean that the C. R. & L. is entitled to exclude The Connecticut Company 1599
from all operations west of this so-called boundary line? A. Under the terms of the lease.

By Mr. Wells:

Q. Do you mean that? We are asking you if that is your opinion. A. As to what date are you speaking?

Q. You are claiming a certain proportion of the bus route which The Connecticut Company is operating? A. And did not turn back.

1600 Q. And you are claiming that upon a certain theory? A. Yes.

Q. We are asking you simply what your theory is. A. The theory was this, that at the time of the original line in 1906 there was a through trolley line from Bridgeport to New Haven via Milford and Woodmont, which is shown where the lower line and the terminus of which is the lower green arrow on the map.

Q. And that still exists, doesn't it? A. Yes, the boundary still exists.

Q. And the line still exists? A. As I have said before our part is a bus line.

1601 Q. Either as a bus or trolley line? A. Yes, and now the northerly boundary point at the time of the line in 1906 there was a through trolley line which ran from Waterbury through Derby to New Haven, and at that time there was a boundary as shown by the arrow at the north.

Q. And that line still exists? A. That line still exists. Now, it seemed logical to me under the terms of the lease where the lessee was obligated to develop and extend the property in towns in which their lines were at that time. I can read the exact words of the lease if you care to have

1602 me do so. Here are two lines going through to New Haven, and the lessee runs a third line approximately half way between the other two, which line wasn't there at the time of the lease, and of course there could be no territorial boundary at that time because the line wasn't there. The question is to determine some logical basis as to where the boundary is on a line which runs between two other lines already there. It seemed to be logical to connect those boundaries by a straight line, and say that in the territory on that side of the line any bus route extended into

that territory was C. R. & L., and any into this 1603
part was Connecticut Company.

Q. Your theory is a town territorial theory? A. Yes.

Q. If the C. R. & L. were operating in a certain town, then it is entitled to all the operations in that town? A. And all the extensions made in that town.

Q. What town is this where this line intersects the bus route? A. That is the town of Orange.

Q. What town is this where this boundary is? A. That is the town of Orange.

Q. And this? (Pointing to C. R. L. Exhibit 36) 1604
A. That is the town of Milford.

Q. Was the C. R. & L. operating exclusively in the town of Orange when the lease was made? That is, was the C. R. & L. the only company operating as a trolley company? A. No.

Q. What other company was operating? A. The Connecticut Company had a part of the connecting line in the town of Orange.

Q. Not in 1906? You don't mean that, do you? A. Well, I don't know—The Connecticut Company. It may have been a predecessor of The Connecticut Company.

Q. Yes. The lease was made with the Con- 1605
solidated Railway? A. Yes.

Q. You know the lease was made with the Consolidated Railway Company as lessee? A. Yes.

Q. You mean that the Consolidated Railway Company was the company operating in the town of Orange when the lease was made as well as the C. R. & L.? A. Yes.

Q. So you don't claim the town of Orange? A. Wait a minute. I should like to read this quotation from the lease.

1606 Q. You spoke of a territorial theory, and I am trying to find out just what you mean by that? A. I mean just this. (Reading:) "And the lessee further covenants that it . . . will enlarge and extent said property within the territorial limits of the towns where said property is now located; and that it will acquire so far as practicable the necessary franchises, rights and powers in the name of the lessor."

Q. I know what the lease says. I am asking you. A. That is the basis of the whole thing.

Q. Well, you are placing a certain interpretation on this language? A. It says "the exten-
1607 sions within the towns." Now, this obviously means extensions within the towns of Milford and Orange to meet lines originally of the C. R. & L.

Q. Isn't it just as truly an extension from New Haven through the town of Orange? A. Well, that is a mere matter of words, I think, because it runs from Bridgeport through to New Haven, and it covers the whole territory.

Q. You don't take the position that because the C. R. & L. was operating in a certain town, it owns all of the territory there, or do you? A. No.
1608 It obviously could not own this part of the line, because that was owned by some other company at that time.

Q. Are there any other people operating bus routes or trolley routes where the C. R. & L. is now operating? A. I believe there are.

Q. So that the C. R. & L. doesn't have any exclusive right to operate in a certain town? It doesn't own all the facilities in that town? A. Perhaps it ought to but it doesn't.

Q. This route does not parallel within any close proximity the established routes of the C. R.

& L. except for a comparatively short distance, 1609
does it? A. It does. As a matter of fact it directly competes with the C. R. & L. bus between the center of Bridgeport and the Milford part from Milford Center to the center of Bridgeport. It parallels it on the same streets and is direct competition.

Q. What is the rate of fare? A. I believe the rate of fare through is fifty cents, as I remember it, from Bridgeport to New Haven. I don't know what the fare is off hand from New Haven to Bridgeport. I think the first zone fare on the Connecticut Company bus is ten cents, but the 1610
fares are all so complicated I can't begin to tell you what they are on the system.

Q. Do you know whether or not the rate of fare on this bus route which you claim, is greater or less than the rate of fare being charged on these other lines? A. I don't know up to Milford, but I do know that The Connecticut Company bus provides express service and provides——

Q. Do you know how much it costs a person to go from Bridgeport up to New Haven on the trolley or combination trolley and bus route? A. I don't know offhand. I have it all tabulated in 1611
the office.

REDIRECT-EXAMINATION BY MR. MARTIN:

Q. Mr. Carr, the next bus route in controversy is known as the New Britain-Hartford bus route. Have you got a map of that? A. Yes, sir.

Q. You had this map made under your supervision? A. Yes.

Q. Where does this route run? A. As operated under the last amendment No. 218, certificate No.

1612 200 issued to The Connecticut Company by the Public Utilities Commission of Hartford, it runs from Main and Gold Streets, Hartford, through Main Street, Elm Street, Hudson Street, Capitol Avenue, Prospect Avenue, Boulevard, South Main Street and in West Hartford; then to New Britain via New Britain Avenue, Stanley Street, Commonwealth Avenue, Carleton Street, Allen Street, Oak Street, LaSalle Street, Tremont Street and North Street, North Main Street, West Main Street, around the triangle through Chestnut Street and returning via the same route to Hud-
1613 son Street, Hartford to Gold Street to Main Street to the point of starting.

Q. Do you know when this bus line was originally established? A. Yes it was started January 5, 1925.

Q. Did it replace a trolley line? A. No.

Q. It was a new bus route? A. Yes.

Q. Does this map indicate the bus route that you have just described? A. Yes, this map indicates the bus route in red.

Q. The bus route that you have described is indicated on the map in red? A. Yes.

1614 Mr. Martin: I offer the map in evidence.

(The map referred to was then received in evidence and marked "C. R. L. Exhibit 37.")

Q. (By Mr. Martin) The red line on this map, Mr. Carr, appears to go from an arrow on the boundary line of the town of Newington southerly into the middle of the town. What is that town? A. New Britain.

Q. And that is being operated now by The Connecticut Company? A. Yes.

Q. None of the avails or proceeds are being paid over or accounted for in any way to C. R. & L.? A. No 1615

Q. Why should C. R. & L. have that much of the bus route? A. Well, the reason is very much the same as the reason given on the other map except that you don't happen to have two parallel routes. The extensions of the system within the town of New Britain and Newington could logically in my opinion be claimed as part of the C. R. & L. territory or property. The boundary on the old trolley line between Hartford and New Britain is shown by the black arrow on the brown colored route. 1616

Q. You mean the black arrow at the word "Newington?" A. Yes.

Q. What does that show? A. That shows the boundary between the C. R. & L. property and the property of The Connecticut Company.

Q. That is to say——A. Established in 1906 or prior to 1906.

Q. That is to say that the part of the route going through the word "Newington," which is south of that arrow, belongs to and is operated by the C. R. & L. today, is that correct? A. Yes.

Q. Yes. A. The part of the bus route lying in the town of New Britain and lying in the town of Newington could logically be considered as part of the C. R. & L. territory as an extension in those towns. 1617

Q. Well, if I may re-phrase your thought.

Mr. Wells: I object to Mr. Martin's re-phrasing the witness' thought.

Mr. Martin: I think the witness is trying very hard to tell us something, but is almost unable to do it.

1618 Hincks, *J.*: It seems to me that Mr. Martin is asking him to state contentions rather than facts.

Mr. Martin: I don't mean to do that.

Hincks, *J.*: I would be glad to have you state your own contentions.

Mr. Martin: I will.

Hincks, *J.*: And leave the facts for the witness.

Mr. Martin: The basis of this claim is that in 1906 when the C. R. & L. let this trolley property to the Consolidated Railway, it
1619 owned and operated a line in the town of New Britain running from Newington into the middle of New Britain. It regarded New Britain as the C. R. & L. territory, and when in 1925 The Connecticut Company ran a new line into the town of New Britain, the C. R. & L. considered that it ran a line into the C. R. & L. territory, and as The Connecticut Company was in complete control of the entire property at that time and on the spot and in possession of the property, it owed a duty to its absent landlord, the C. R. & L., and under its lessee's covenant it would at
1620 its own first cost and expense enlarge the property within the territorial limits of towns where the C. R. & L. property was then located. It was under a duty to allocate this property to the C. R. & L.

Hincks, *J.*: Are there any facts which you want to bring in in connection with this ruling? I take it that what you have just stated is your contention?

Mr. Martin: My contention.

Hincks, *J.*: Is there any other evidence I need to pass on that other than the map and the lease that is in evidence?

Mr. Martin: No, I think Mr. Carr has tes- 1621
tified that C. R. & L. operated within the town of Newington into the middle of New Britain, and the conclusion which I draw from that fact is that New Britain and Newington are C. R. & L. territory.

Hincks, *J.*: Do opposing counsel want to state their contentions now or are they reserving them to a later stage?

Mr. Wells: We reserve them.

Hincks, *J.*: Is there any cross-examination on this?

Mr. Wells: Yes, your honor.

1622

CROSS-EXAMINATION BY MR. WELLS:

Q. You say that the C. R. & L. operated in the town of Newington in 1906? A. Yes.

Q. Did the Consolidated Railway Company operate in the town of Newington in 1906 also? A. I don't remember the name of the company. It was the old Hartford Street Railway, wasn't it?

Q. Well, the lessee of this property prior to the time of the lease was the Consolidated Railway Company? A. Yes.

Q. I am speaking of that company. A. Yes. 1623

Q. It also operated in the town of Newington? A. Yes, correct.

Q. So that could not possibly be considered exclusive C. R. & L. territory?

Mr. Martin: I object to that as involving a conclusion.

Mr. Wells: I am asking the witness for a conclusion.

Mr. Martin: Yes, but the witness is not fit to draw a conclusion.

Hincks, *J.*: Excluded.

1624 Q. (By Mr. Wells). This bus route which you claim touches the edge of Newington only in one corner, is that right? A. It apparently cuts across the boundary line at two points. It cuts the Newington-Farmington town line, and it cuts the West Hartford and Newington town line.

Q. That little segment of the route in the town of Newington is about how long? A. I would guess about two hundred feet. I think this map is about 416 feet to the inch. That is about a half inch.

Q. About two hundred feet in this town where
1625 you operated and the Consolidated operated? A. That's right.

Q. That is the basis on which you contend that you should have a share in this route? A. Well, I might also point out that that point is also about a hundred feet from the New Britain line. Now, if I am out on the location of that boundary, it is only about a hundred feet.

Q. I notice from the map that a large part of this route runs through the town of Newington. Did the C. R. & L. ever operate in that town? A. Not so far as I know.

Q. Where did the C. R. & L. lines end? (No
1626 answer was given.)

Hincks, J.: I should say there is only about three hundred feet in the town of Farmington, isn't that so?

Mr. Wells: Yes, that is true.

Q. (By Mr. Wells) I was asking where the terminus of the C. R. & L. line was, which is parallel to this route which you claim. Where was its extreme terminus? A. I suppose it has the same terminus now. May I refer to the original contract?

Q. Not in Newington; not this route to which 1627
apparently there is no question, but here there is a short distance, as I understand it, where there is a duplication of facilities, where there is it might be said direct competition. A. Are you discussing this particular bus route or some other route?

Q. Yes, this one. Isn't there a trolley or bus line running out in this same district in New Britain? A. There is a bus route which covers the short section. As a matter of fact, the bus route I believe you are referring to is shown in green.

Q. Oh, yes. A. It does not cover the route 1628
covered by the bus route in question that runs through to Hartford, because you will see this large section in there is not covered at all.

Q. Yes. In other words, C. R. & L. line never extended beyond the point shown there in green, that is, in New Britain, is that correct? A. That is a difficult question. I can only answer it this way that the property and bus route turned back by The Connecticut Company to the C. R. & L. November 16, 1906 (?) didn't go beyond that point.

Q. You don't know if the C. R. & L. had an 1629
extension beyond that point? A. On that particular route, no.

Q. What is the comparative distance between this route about which there is no question and the route that you claim? A. I can't answer that offhand.

Q. Can you state which is the more direct route between Hartford and New Britain? A. Yes. I know that the route which approximately follows the old trolley route is the more direct route.

1630 By Hincks, *J.*:

Q. That is the route through Newington Center. A. Yes, that is the shortest distance.

By Mr. Wells:

Q. Do you know the comparative rates of fare on these two routes? A. I did know, but I don't recall them at this moment.

By Hincks, *J.*:

Q. Do you consider that this westerly route,
1631 which I may call the controversial route, is in direct competition with the former New Britain-Hartford route through Newington Center?

Mr. Wells: That is still in existence as I understand it.

Witness: If I understand your honor's question as to whether the later route established to the west was in direct competition with the former route?

Q. (By Hincks, *J.*) Yes, as to through traffic. A. Yes, I would say that it was to some extent.

Q. How can you say that if you don't know
1632 the comparative fare? A. Well——

Q. If it is the case that the fare on the new route or the westerly route is higher than the fare on the Newington route, would you consider that the westerly route had stolen any traffic from the older route? A. I would say that it could, because people residing in the section of town traversed by the westerly route would get on a bus out beyond the center of town. In other words, they might have to take a local bus.

Q. Isn't what you are really saying this, that 1633
it might defer traffic from people living in the northerly section of New Britain? A. Yes.

Q. Have you any data to the effect that it has been? A. I have not, no, sir.

Q. On the southerly end of the controversial route it appears that southerly from the Hartford road the C. R. & L. is operating a bus route over Stanley Street for a distance, and that the controversial route passes over that same street for a distance. Do you see that place? A. Yes.

Q. Do you know the origin of that C. R. & L. bus 1634
route? I understood you to say that it was there when you re-possessed from The Connecticut Company? A. That's correct.

Q. Do you know anything beyond that as to the origin of that route? A. I haven't it here but I believe the information is in the room, and I can obtain it in a few moments from one of the other witnesses.

Hincks, *J.*: I won't ask for it unless counsel think it is important. I will observe that it seems to me I am given a very slender record of facts on which to decide a contro- 1635
verted issue.

Witness: Well, I have the information on the so-called controversial route complete. I have already given that on the controversial route.

Hincks, *J.*: Perhaps it would have no bearing.

Q. (By Hincks, *J.*) Do you think it has any bearing? A. I don't think so at all, your honor.

Martin: Is your honor testing it out to see whether they actually competed with established routes? Is that the information——

1636 Hincks, *J.*: I think perhaps I better ask you your theory on this. I never had to pass on a conflict of bus routes. I assume that you were claiming that after the lease of 1906 neither the Consolidated nor any of its successors might properly extend its own lines at the expense of its leased lines. Now, what can possibly enter into that except the presence of competition? Is there any other factor?

Mr. Martin: I have regarded the provisions of the lease as requiring the lessee, when it extended any property within the
1637 territorial limits of the towns where C. R. & L. property was, to do it for the account of C. R. & L. and not for its own account, irrespective of any competitive conditions. That is the way I consider what the lease means, because otherwise the question of does it compete or does it not compete would be decisive in every case. I can't imagine making a lease on the basis of whether non-competitive lines should be established in territory that was being developed. In other words, the question of competition is not the
1638 the great question. The question is whether within C. R. & L. territory they discharged their duty to develop, extend and promote the franchise and property; and they didn't do it.

Hincks, *J.*: What measures that duty?

Martin: Well, surely if they were able to extend and develop a line which they claimed was their own in that territory, it must have been an equally profitable venture to extend lines on behalf of C. R. & L. in that territory, and that is what they ought to have done.

Hincks, *J.*: Take a given town. Now, assume that after the lease was executed the leased lines constituted one-fourth of the mileage and the owned lines three-fourths of the mileage in that town. 1639

Mr. Martin: Yes.

Hincks, *J.*: Is it your contention that the lease had the effect of a negative covenant, so that the lessee covenanted that all expansions in that town should be treated as a part of the leased lines and not at all as a part of the owned lines?

Mr. Martin: Unless they were obviously subsidiary branches of their own line already established, yes. Of course, if they wanted to build a car barn or put a switch in on their own line, that would be all right, but if they propose to develop the territory and to tap new sources of supply for passengers, they have got to do it for the account of C. R. & L. That was the basis that they took the business on. 1640

As an actual fact I think there are very few of those situations such as you mentioned.

Hincks, *J.*: I should like to hear an outline of the opposing theory. 1641

Mr. Wells: We think your honor has already stated our theory pretty well. Mr. Martin begs the question when he speaks of C. R. & L. territory. He assumes that a certain town belongs to the C. R. & L. regardless of whether they ever operated in certain parts of it or not. He wants to claim certain lines which were built in adjoining our lines and not extending into the part of

1642 the territory where they were, but anywhere within the town limits. We think that competition is the true test. We have stated that we would concede a part of that line in New Britain from where the C. R. & L. lies, but not content with Mr. Martin's theory they are asking for more.

Hincks, *J.*: I see the theories. Now let's go on with the facts.

Mr. Martin: The next business which is the subject of controversy between C. R. & L. and The Connecticut Company is the so-called tobacco workers special busses.

1643

By Mr. Martin:

Q. What does that mean, Mr. Carr? A. Why, they are busses operated over substantially the route that we have just been discussing between New Britain and Hartford to carry workers who live in New Britain and who work in the tobacco sheds of Hartford; and these busses carry the workers up in the morning. There may be from one to six busses operated, and they bring the workers back at night to their homes in New Britain.

1644

Hincks, *J.*: Does that show on Exhibit 37?

Mr. Martin: It is the same map as your honor had before.

By Hincks, *J.*:

Q. What is the controversial—— A. It is the same route. These busses run over the same route that we have just discussed a few moments ago between New Britain and Hartford.

By Mr. Wells: 1645

Q. That is, the controversial route? A. Yes. It is an additional service to the original bus service, which has been accounted for specially as a revenue item.

By Mr. Martin:

Q. The traffic originates in New Britain? A. Yes.

Q. New Britain is one of the towns that C. R. & L. operates in? A. Yes.

Q. And did not in 1906? A. No.

Q. When did it begin? A. The history of the 1646 route——

Q. Wait a minute. When did C. R. & L. first begin to operate their trolleys or busses in New Britain? A. I will get out our charter.

Q. Before 1906? A. Oh, yes, before 1906.

Q. New Britain is the town in which C. R. & L. operated transit facilities before 1906? A. Yes.

Q. This traffic originates in New Britain? A. Yes.

Q. And where does it go? A. To Hartford.

Q. All the way to Hartford? A. Yes.

Q. And goes out in the morning? A. Yes. 1647

Q. And does it come back at night? A. Yes.

Q. Is that all it amounts to? A. Yes.

Q. How many busses does that take? A. The number varies. The maximum, I believe, is somewhere around six.

Q. Do they follow this red route marked on the map? A. Yes, substantially so. I have the exact description of it here. I think it is the same route exactly as the others. They terminate at a little different point in the city of Hartford.

Q. Is it the red route marked on this map, Mr. Carr? A. Yes, plus an extension. The exten-

1648 sion is from Commonwealth Avenue, from Farmington Avenue to Carlton Street in the city of New Britain, and on Commerce Street, from State Street to Shelton Street in the city of Hartford.

Q. Do you know when this business was originally initiated? A. Yes.

Q. When? A. October 21, 1935 under a temporary certificate issued by the Public Utilities Commission.

Q. Was it issued to The Connecticut Company? A. Yes.

1649 Q. You claim that The Connecticut Company should assign the certificate to the C. R. & L.? A. Yes, for the part of the route lying within the city of New Britain, substantially the boundary point indicated by the arrow on that route.

Q. Is the amount of your claim the proportionate part of the journey up to the arrow in question as compared with the whole journey? A. Yes.

Q. That is what you think would be fair? A. Yes.

1650 Mr. Martin: Now, your honor, in explanation of those facts may I say that the claim of C. R. & L. in this connection is that it should have a share of this special business of daily transportation of the tobacco workers from New Britain to Hartford in the morning and back again in the evening; that this bus originates in our town of New Britain, and it is our contention that to be fair we should get some such proportion of the net revenue as is represented by the mileage from the middle of New Britain to the arrow as compared with the balance of the mileage in the route.

Hincks, *J.*: Why do you say New Britain 1651
is your town any more than Hartford county is your county?

Martin: Because the lease says "territorial limits of the towns." That is what we are going——

Hincks, *J.*: That is the ground on which you base your claim?

Mr. Martin: Yes. "It will enlarge and extend said property within the territorial limits of the towns." That is the reason for that.

1652

By Mr. Martin:

Q. Do you know where the original busses operated from in connection with this tobacco workers group? A. Yes. They were operated out of the New Britain garage of The Connecticut Company.

Q. You mean before November 16, 1936 The Connecticut Company operated this out of the New Britain garage? A. Yes, in a similar manner but operating some of the busses on the No. 2 controversial route from New Britain to Hartford, and I may say that The Connecticut Company turned over six busses to the C. R. & L. November 16, 1936, with which to operate these tobacco special busses morning and night. 1653

Mr. Wells: I think his testimony is irrelevant, since it was only a matter of managerial convenience.

Hincks, *J.*: It may remain in the record for what it is worth.

Mr. Wells: Since Mr. Martin has stated his construction of the lease, I think perhaps I had better state that he is placing

1654 stress upon the territorial limits of the towns, while we are stressing the other phrase in the lease: "It will enlarge and extend said property within those towns." We think that Mr. Martin's theory is incorrect; that it is obviously unworkable in towns where both companies have been operating.

CROSS-EXAMINATION BY MR. WELLS:

Q. Mr. Carr, you speak of the traffic originating in New Britain. Do you say if I take a bus home tonight in Hamden, that that traffic originates in Hamden, because I live in Hamden?
1655 A. Well, I can answer that question this way, that any traffic between two points depends on the two points. If you didn't have the two points you wouldn't have any traffic between them.

Hincks, *J.*: In other words, there is no traffic between one point.

Q. (Mr. Wells) The arrow you have established here is a point from which you think you should share the business purely on the territorial limit of the towns? That is your idea? A. Yes. There is another check that could be
1656 made, that is, that the distance out from the center is the same by either route.

* * * * * *

DIRECT-EXAMINATION BY MR. MARTIN:

Q. Now, Mr. Carr, the next claim is for the Stamford-Darien railroad station bus route. Have you got a map of that? A. Yes.

Q. Have you outlined on that map where this route in question runs? A. Yes.

Q. Is it marked in red? A. Yes.

Q. Will you read into the record where that goes? 1657

Hincks, *J.*: While he is doing that can't you have the map marked?

Mr. Martin: Yes, sir. I offer the map in evidence.

(The map referred to was then received in evidence and marked "C. R. L. Exhibit 39.")

Witness: This route is marked No. 5 on the map. As operated under the last amendment No. 91, Certificate No. 200 issued by the Public Utilities Commission it operates from the Stamford Hospital via West Broad Street, Atlantic Street, West Main Street, Bank Street, Atlantic Square, Main Street, Lawn Avenue, Hamilton Avenue, Courtland Avenue, Maple Avenue and West Avenue to the railroad underpass at Darien; returning over the same route to Main Street, Bank Street, Atlantic Square, Atlantic Street and West Broad Street to the Stamford Hospital. Also from the Stamford Hospital over the same streets as above described in each direction to the junction of West Avenue and Noroton Avenue; thence along Noroton Avenue to the Middlesex Road, and returning over the same streets to the Stamford Hospital. 1658 1659

Q. Now, there is a route marked in green on this map. That is a C. R. & L. route? A. The route marked in green is a present C. R. & L. route, and it follows the same streets as were followed by the former C. R. & L. trolley route between Norwalk and Stamford.

Q. Was that trolley route in operation in 1906? A. Yes.

Q. When was this red route established? A. This route was originally established on July 11,

1660 1921 operating over substantially the same streets mentioned in the descripton as far as Glenbrook. On October 1, 1921 this route was extended to the Soldiers Home adjacent to Noroton Avenue in Darien. An additional extension to the route was made on December 15, 1923 to the Darien railroad station. The extension that I mentioned above on Noroton Avenue as set forth above was established April 25, 1923. That is, the short section of the route between West Avenue and Middlesex Avenue on Noroton Avenue was established April 25, 1923.

Q. Now, at two points on the Noroton River you
1661 have put in arrows, one at Glenbrook, one at West Avenue just below. At that point the red route appears to cross the Noroton Avenue River, is that so? A. Well, the route we are discussing is the West Avenue route that crosses Noroton River at the center of the arrow of the "three" on the map.

Q. Where does it go further going west? A. It goes into Stamford.

Q. And Stamford is Connecticut Company territory? A. Yes.

Q. The town of Stamford lies to the west of the
1662 Noroton River? A. Yes.

Q. And likewise the northern most arrow on the Middlesex Road route crosses the Noroton River and goes on into Stamford? A. Yes, although we have not so far discussed that particular route. It is the route marked No. 5 that we are discussing.

Q. I see. The southern most arrow opposite the word "state highway" on the green route indicates where the green route crosses Noroton River, is that right? A. Yes.

Q. Are you operating that green route? A. 1663
Yes.

Q. Do you operate it into Stamford? A. Partially.

Q. Well, it goes over the Noroton River in the direction of Stamford, doesn't it? A. If I might explain, that route has been a through route between Norwalk and Stamford. In order to provide through service we have agreed with The Connecticut Company to have their busses operate from Stamford over our route lying easterly of the Noroton River into Norwalk, and they have agreed that our busses shall run from 1664
Norwalk into Stamford, and we allocate revenues and expenses as of the Noroton River as boundary.

Q. In short, as to the green route between Norwalk and Stamford there has been an agreement between the two companies to have the net revenues allocated between them? A. Correct.

Q. But as to the red route, No. 5 here, no such agreement has been entered into? A. Correct.

Q. And what you would like to do is to enter into some such agreement with regard to the red route also, is that right? A. Yes. 1665

Q. Where does the red route end going eastward? A. At the underpass of the New Haven Railroad as described in the route, if we can find it. (Looking at Exhibit 39)

Q. Right in the middle of the town of Darien? A. Yes, practically at the New Haven railroad station.

Q. It does not go on into Norwalk? A. No.

Q. It just ends there? A. Correct.

Q. I see.

1666 CROSS-EXAMINATION BY MR. WELLS:

Q. As I understand it, Mr. Carr, this route in green—the part that you show—is a part of a jointly operated bus route by the C. R. & L. and The Connecticut Company? A. Yes.

Q. It was previously a trolley line? A. That's correct.

Q. The controversial route you are just talking about and the one you marked No. 5, aren't you? A. Yes.

Q. It doesn't touch any C. R. & L. line, does it? A. It comes practically to the same point.

1667 Q. But it doesn't touch any C. R. & L. line, does it? A. No.

Q. Nor any line that C. R. & L. ever had as far as you know? A. That's correct.

Q. Would you call it competitive? A. Competitive with what?

Q. With the C. R. & L. line. A. With this green line?

Q. Yes. A. No.

Q. You would not? A. No.

Q. That is the New Haven Railroad line between the two, isn't it, there? A. Yes.

1668 Q. In other words, this line is clear over on the other side of the railroad track? A. It is on the other side of the railroad track.

Q. And quite a distance from the green line. Can you estimate the distance? A. Let's see what this scale is.

Q. Well, never mind. The scale is on the map. You need not estimate. A. About a mile roughly at the widest point.

Q. So that you don't contend that this is an extension of any C. R. & L. line? A. No. The answer is no to that.

Q. You know that it is an extension of a Stamford line? A. I know that it is an extension——

Q. This is just one end of a line running into Stamford, isn't it? A. It is an extension across the Stamford-Darien town line across the town of Darien.

DIRECT-EXAMINATION BY MR. MARTIN:

Q. Taking up the next controversial route, Mr. Carr, No. 6, we use the same map, do we not? A. Yes.

Q. This is known as the Stamford-Darien-Middlesex Road bus route, is that right? A. Correct.

Q. That is shown in red on the map marked No. 6 in blue? A. Yes.

Q. It runs from the Norwalk River at Glenbrook along the Middlesex Road to Chester route? A. That is the Noroton River.

Q. Is that correct? A. Yes.

Q. Do you know when that route was established? A. Yes, on January 15, 1931.

Q. That route, as you said I think, crosses the Noroton River going west and goes into Stamford, and no part of the net operating income or profits from that route has been turned over to C. R. & L. or accounted for? A. No.

Q. The Connecticut Company claims that as its own property, is that correct? A. It was not turned over to C. R. & L. November 16, 1936.

Q. And the same applied to route No. 5 on this map? A. Yes.

1672 CROSS-EXAMINATION BY MR. WELLS:

Q. Mr. Carr, this is merely a little tag end of a route that comes out of Stamford, isn't it? A. Why, it is a route out of Stamford which crosses the Noroton River and runs into the town of Darien.

Q. So that the only basis of your contention is that this crosses the river and comes for a short distance into this town which you say you own? A. Yes, yes.

REDIRECT-EXAMINATION BY MR. MARTIN:

1673 Q. Have you made a calculation of the busses required for the operation of these five routes? Of course, I am leaving out the Meriden-Plainville bus route now? A. Yes.

Q. For the Bridgeport-New Haven route how many busses would be required? A. One bus.

Q. For the C. R. & L. portion A. Yes.

Q. That is to say, the portion of the traffic that is in proportion to the route claimed by C. R. & L. could be taken care of by one 32-passenger bus? A. The through part of the route which operates from substantially the
1674 center of New Haven to the center of Bridgeport requires two regular busses for operation. One bus would be required for the C. R. & L. portion.

Q. For the New Britain-Hartford route, No. 2, on the same basis how many busses would be required. A. One 32-passenger bus.

Q. For these last two routes spoken of, No. 5 and No. 6, the Stamford-Darien railroad station route and the Chester-Darien-Middlesex Road route how many passenger busses would be required? A. Two.

REDIRECT-EXAMINATION BY MR. MARTIN: 1675

Q. Mr. Carr, on the transfer of rolling stock to C. R. & L. on November 16, 1936 certain registrations and licenses had to be transferred. Have you got a memorandum with regard to those? A. Yes.

Q. How many busses were there? A. 126 busses.

Q. How many other licenses had to be transferred? A. Three livery licenses and nineteen licenses for service vehicles.

Q. How much were the transfer fees? A. A dollar per vehicle. 1676

Q. A total of one hundred and fifty-two dollars? A. Yes.

Q. Paid for transfer registrations on these vehicles? A. Yes.

* * * * *

Q. (By Mr. Martin) Mr. Carr, I asked you to secure, please, the gross income received by C. R. & L. from the properties turned over to it on November 16, 1936 by months. Have you secured that information? A. Yes.

Q. Will you read out the gross income beginning with the half month, that is to say, the 1677 last half of November, 1936?

Hincks, *J.*: Before we go into that I think I ought to say that in view of our conference just before our last recess I feel that counsel representing The Connecticut Company and the trustees ought to fully understand that they have complete liberty of action with respect to this offer. To speak frankly, I take it Mr. Martin is now following out what he might call a suggestion of the Court, and I don't want opposing counsel to feel in any

1678 way constrained in the premises. The suggestion was a casual one coming from the bench, and I want counsel to feel that they have complete liberty of action.

Mr. Garfield: I do so feel, your honor, but I don't quite see any basis for objecting to this question.

Q. By Mr. Martin) Go ahead. A. The total revenue figure for the period from November 16 to November 30, 1936 was $101,822.

By Hincks, *J.*:

1679 Q. That includes both trolley and bus? A. Yes, your Honor. I have it separately if you would like it that way.

Hincks, *J.*: Are you interested in anything except bus revenues for present purposes?

Mr. Martin: Yes, sir. I have to be interested in the total, because the figures that I am going to get from The Connecticut Company are from the total operating—that is, of both trolleys and busses. Furthermore, there was a shift—not a very great shift—during this period, but a shift from trolleys to busses. So that it has to be a control. I
1680 think it will be a better control if it is the entire gross revenues rather than from the revenue from trolley and busses separated, because I think the total is the figure that is going to be pertinent. Your honor, I don't think it means much to take just the busses, because as you got more busses—and through this period (it is before C. R. & L. took over) there were slowly more busses coming in, and that does not represent the gross business as well as the sum of it.

Hincks, *J.*: All right.

Q. (By Mr. Martin) Go ahead. A. For the 1681
month of December, 1936 $232,569. For the month of January, 1937 $209,167. For the month of February, 1937 $199,374. For the month of March, 1937 $230,747. For the month of April, 1937 $224,587. For the month of May, 1937 $235,341.

Q. Can you give the C. R. & L.'s gross income for November 16, to 30, 1936 from busses? A. Yes.

Mr. Martin: I don't think I quite understand. Will you repeat it?

Mr. Garfield: I have asked for the gross 1682
revenue of the C. R. & L. from busses from November 16 to November 30, 1936.

Mr. Martin: Oh, I see.

A. $59,355.

Q. And the same for the month of December, 1936? A. $138,483.

Q. Were there any abandonments of trolley lines in C. R. & L. territory between October 23, 1935 and November 16, 1936? A. Yes, there were some.

Q. What were they? A. I don't know that I 1683
can recall them all, because we were not operating the property, but I believe there was one from Waterbury to Naugatuck. I think that was in December, 1935, as I remember it.

Hincks, *J.*: What were the dates of your question, Mr. Garfield?

Mr. Garfield: Between October 23, 1935 and November 16, 1936.

Q. (By Mr. Garfield) Are you sure of that date, Mr. Carr? A. I am not sure of the date, no. I have a little of it but I don't have the figures with me.

1684 By Hincks, *J.*:

Q. Have you got the records in the courtroom? A. I believe it is. I believe I can find it. It may take me a few minutes.

Q. Perhaps we could have that after lunch. Were there any other shifts during that same period? A. I think there were some abandonments during that same period.

Mr. Garfield: May we have that information during the recess?

Hincks, *J.*: Very well.

1685 Q. (By Mr. Garfield) Can you separate the gross bus income for the period from November 16, 1936 to December 31, 1936, which you just gave me, to show separately the income from the lines which took the place of any trolley lines that were abandoned, if there were any abandoned in that period? A. The revenue from the bus lines that were substituted for rail lines in that period?

Q. Yes, the revenue from bus lines which had been substituted for trolley lines since October, 1935. A. That can be determined. I haven't the figures with me. It would have to come from our individual route sheets.

1686 Q. Couldn't you give us that right after lunch? A. I doubt it.

Q. Will you try? A. I will try. It means getting it from our Bridgeport office.

Q. You may find there was no substitution. A. I know there was a substitution on November 16, 1936.

Q. What was that substitution? A. The Plainville-New Britain line.

Q. Can you give me the bus revenues from that line separately? A. From the same source, from our Bridgeport general office. I will try.

Q. Were there any other substitutions from No- 1687
vember 16 to December 31, 1936 inclusive? A. I can't tell you. We substituted so many lines so rapidly that I can't remember the dates, but I can determine that by this afternoon.

Q. The substance of what I would like would be what substitution of busses for trolleys there was between October 23, 1935 and December 31, 1936. A. Pardon me for interrupting you a moment. That was the period during which The Connecticut Company was operating, and I believe that those dates would be more properly furnished by The Connecticut Company.

Q. I asked you a moment ago and you said that 1688
you could have it after luncheon.

Mr. Martin: I was confused myself, Mr. Garfield, as to the period, and if I had realized that you were asking for a period beginning in October, 1935, I would have suggested myself that The Connecticut Company produce those figures up to the time they stopped operating. We will do the best we can for the figures beginning November 16, 1936. Mr. Garfield: I suggest, your honor, this. We will tell Mr. Carr what substitu- 1689
tions of busses for trolleys occurred, if any, in C. R. & L. territory between October 23, 1935 and November 16, 1936. To that list I will add the substitutions between November 16, 1936 and November 31, 1936, and he will then give us as near as he can the gross revenues from the busses operated on the routes where any of these substitutions occurred for the period from November 16 to December 31, 1936.

Mr. Martin: Mr. Garfield, are you going to give us the gross revenues from the routes

1690 on which substitutions were made during the period of your possession?

Mr. Garfield: I think we can.

Mr. Martin: We might as well have a complete total if we are going to do that.

Hincks, *J.*: Shall we suspend here, then?

. . . . . .

Mr. Martin: There is one thing on my mind, and that is the gross income which The Connecticut Company is going to supply us with. I wonder if that is ready or not.

1691 Mr. Garfield: Do you want me to read it in?

Mr. Martin: If you would read it in.

Mr. Garfield: For the month of November, 1935 the gross revenues of The Connecticut Company from C. R. & L. territory were $190,831 total; from motor coach operation alone $103,088. For the period from December 1 to December 17, 1935 the corresponding gross revenues were $113,290 total; $60,830 from motor coach.

Mr. Martin: That, your honor, completes

1692 the claimant's case.

The Claimant Rested.

William W. Bodine was called by the Debtors as a witness, and testified:

The stock of the Connecticut Railway and Lighting Company is owned as follows: 82% of the Preferred stock and 43% of the Common stock is owned by the United Gas Improvement Company, both classes being voting stocks, mak-

ing a total ownership of 65%; U. G. I. has guaranteed the interest on $12,000,000. of the $13,000,000. of bonds of C. R. & L.; and U. G. I. likewise owns approximately 62% of stock of Connecticut Light and Power Company, which latter company owns and operates the gas and electric properties which were included in the 1906 Lease. U. G. I. likewise owns all the stock of the Delaware Electric Power Company; and the latter company owns all the stock of the Delaware Bus Company. The Delaware Electric Power Company owns all the stock of the Southern Pennsylvania Bus Company. U. G. I. owns 50% of the Common Stock of United Engineers and Contractors, Inc.; and the Public Service Corporation of New Jersey owns the other 50% of the Common stock of United Engineers. U. G. I. owns 36% of Common Stock of Public Service Corporation of New Jersey and 10,000 shares of Preferred stock, a total voting interest of about 28% of the stock. The earlier name of Connecticut Light and Power Company was Rocky River Power Company, which was controlled by U. G. I. through the Connecticut Electric Syndicate. 1693 1694

1695

W. H. Rowland, called as a witness in behalf of the respondents, testified:

He is assistant Secretary of The New York, New Haven and Hartford Railroad Company and has been since 1916, having been with the Company since 1906. He produced from the files in the office of the Secretary of that Company the original Agreement between the Trustees of The New York, New Haven and Hartford Railroad Company, The New York, New Haven and Hartford Railroad Company and The Connecticut

1696 Company dated December 16, 1935 cancelling the sublease from the New Haven to The Connecticut Company of the C. R. & L. trolley properties. This document was offered as an exhibit and was received as Exhibit 100 over the objection of counsel for C. R. & L.

The witness stated that Arthur E. Clark is Secretary of both The Connecticut Company and The New York, New Haven and Hartford Railroad Company, and that the Secretary's files of both companies are kept in his office. He made a search of both files for the purpose of ascertaining whether The Connecticut Company ever
1697 filed with C. R. & L. formal acceptance of the lessee's interest under the lease from C. R. & L. to the Consolidated Railway Company dated December 19, 1906. As a result of such search he stated that he could find no record that any formal acceptance was ever filed. He found from the files that C. R. & L. had requested such an acceptance from United Electric Light and Water Company in connection with the demise to it dated December 30, 1911.

The witness stated that The New York, New Haven and Hartford Railroad Company did not
1698 own or control the United Electric Light and Water Company at that time, and that The New York, New Haven and Hartford Railroad Company ceased on February 24, 1917 to own or control the Housatonic Power Company.

Richard J. Bennett called as a witness in behalf of the respondents testified as follows:

He has been for the last two years Vice President and General Manager in charge of Operations and Maintenance of The Connecticut Com-

pany. He entered the employ of the Consoli- 1699
dated Railway Company in 1904 and has been with that company and The New Haven Railroad or The Connecticut Company ever since. In 1906 he was chief clerk to the Vice President and General Manager in Charge of Operations of the Consolidated Railway Company at the time when the lease from C. R. & L. to the Consolidated Railway Company was made. The Vice President at that time was in general charge of operations and maintenance of the property of the Consolidated Railway Company.

The witness testified that the C. R. & L. prop- 1700
erty was taken over by the Consolidated Railway Company in December 1906, that during the first seven months of 1907 there were authorized by the lessee expenditures in the amount of $1,202,699 on the C. R. & L. property for purposes other than ordinary maintenance and operating expenses. These expenditures were for improvements, extensions or other repairs considered necessary by the responsible officers of the Consolidated Railway Company, and were approved by the engineer in charge, the general manager, the Vice President in charge of Operations and Maintenance, and the President of the Company. 1701

The witness introduced as Exhibit 103 a tabulation of expenditures to be made on C. R. & L. property authorized by the Consolidated Railway Company during the first seven months of 1907 and showing also expenditures under C. R. & L. authorizations during the last five months of 1906.

He stated that Mr. Howard S. Reynolds, who had been assistant to the General Manager of The Connecticut Railway and Lighting Company came over to Consolidated Railway Company

1702 when it took over the property of C. R. & L. and became Assistant General Manager, and remained in that capacity for some time. It was the practice of the General Manager and the Vice President of the Consolidated Railway Company at that time annually to prepare estimates of improvements and betterments to be made to the property during the following year. Mr. Reynolds prepared such an estimate late in 1906 for work to be done on the C. R. & L. property in 1907. That estimate was admitted in evidence as Exhibit 106 over the objection of counsel for
1703 the C. R. & L.

The witness testified that the wages paid in 1906 and 1907 by the Consolidated Railway Company to track repair men was 15¢ an hour, and to men working on electrical lines from 22¢ to 26¢ an hour. In 1935 and 1936 corresponding wages paid were 42¢ per hour for track repair men, 65.7¢ per hour for electrical linemen and 62.5¢ for electrical groundmen.

Since 1906 a number of extensions were made to C. R. & L. trolley lines by the Consolidated Railway Company or The Connecticut Company beyond the location of tracks as they existed in
1704 1906. C. R. & L. accepted franchises covering all such extensions which were still in existence on November 16, 1936.

The Connecticut Company has made no difference between its owned and leased properties in the matter of maintenance or service.

It was stipulated on the record by Counsel that at the time the two C. R. & L. power generating stations were given up, it cost The Connecticut Company substantially less per kilowatt hour to buy than to generate power; and that when the C. R. & L. took back its property on

November 16, 1936, The Connecticut Company 1705
and the New Haven Railroad offered to turn over to it the contract for the purchase of power from the New Haven Railroad which, in turn, was purchasing the power from the Connecticut Light and Power Company at the same price that the Connecticut Light and Power Company was charging, the Claimant reserving an objection and exception as to the materiality of the facts contained in the stipulation.

PERCY R. LEETE, New Haven, Connecticut, 1706
called as a witness in behalf of the respondents, being first duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. GARFIELD:

Q. What is your business, Mr. Leete? A. I am with the New York, New Haven & Hartford Railroad Company.

Q. In what capacity? A. My present title is that of valuation engineer.

Q. In that connection are you in the accounting and valuation departments of the railroad? A. 1707
Yes, sir, the accounting. The valuation department was really absorbed by the accounting department in 1930. I have been attached to the controller's office since that time.

Q. Has it been a part of your duties to perform the same kind of work in connection with The Connecticut Company and its property as in connection with the New York, New Haven & Hartford Railroad Company and its property? A. Substantially so.

Q. Are you familiar with the accounting of The Connecticut Company and with its income ac-

counts? A. Not so much with the income account as with the balance sheet account, particularly the investment account, as the accounting, except for revenue accounting of The Connecticut Company, was taken over actively by the New Haven—I think it was in 1931, at which time I was in active charge of the full details of the road equipment accounting of the New Haven, and became so in charge of the road and equipment accounting of The Connecticut Company and other New Haven subsidiaries.

Q. Are you familiar with the method by which The Connecticut Company paid rent under the sublease to it from the New York, New Haven & Hartford Railroad Company of the C. R. & L. trolley properties? A. Well, I know that The Connecticut Company paid those elements of rental to the New Haven, if that is what you mean.

Q. Do you know that it did not pay them to the C. R. & L. direct? A. To the best of my knowledge I believe it never did.

Q. Is that true since July 6, 1926 as well as prior to that date? A. Well, I have tested that out both before and prior to that date.

Q. Both before and after that date? A. Before and after.

Q. Do you know how payments were made on account of federal income taxes levied on the rent which the C. R. & L. received for its trolley properties? A. I believe they have always been paid directly by the New Haven to the Connecticut Railway & Lighting Company.

Q. Has The Connecticut Company always paid them to the New Haven? A. To the best of my knowledge I believe it has, though I would like to qualify that to make certain that the record is

clear that in the case of those federal income tax 1711
payments the New Haven has paid the one hundred per cent of the income tax payment to the Connecticut Railway & Lighting Company, and then re-collected three-quarters of that from The Connecticut Company and the other one-quarter from the Connecticut Light & Power.

Q. All the three-quarters collected by the New York, New Haven & Hartford Railroad Company were always paid by The Connecticut Company to the New Haven and by the New Haven to the C. R. & L.? A. Yes.

Q. Is The Connecticut Company a wholly owned 1719
subsidiary of the New Haven Railroad? A. Yes, it is.

Q. Was it such on February 28, 1910? A. Well, it was on February 28, 1910.

Q. And has it been such at all times since then? A. Well, after that date, November in 1913, the stock was sold by the New Haven to the New England Navigation Company, which was a wholly owned subsidiary.

Q. Of the New Haven? A. Of the New Haven, and then on April 17, 1917 the New Haven re-acquired the stock from the Navigation Company. Then on October 17, 1914 there was the decree 1713
of the District Court of the United States of the Southern District of New York, which took the stock away from the control of the New Haven and put it into the hands of trustees.

Q. Trustees appointed by the federal court? A. By the federal court.

Q. What did they do with it? A. They were ordered to sell it, and the order to sell was extended from time to time, and the stock never was sold, and the decree was subsequently modified in such a manner as to be practically vacated,

1714 and the stock came back to the New Haven in 1925, I think it was.

Q. Has it been in the hands of the New Haven ever since then? A. In it or its trustees.

Q. You mean it was in the hands of the New Haven until October 23, 1935? A. Yes.

Q. And it has been in the hands of its trustees since they were appointed in this proceeding? A. Yes.

Q. Was the Housatonic Power Company a wholly owned subsidiary of the New Haven on February 28, 1910? A. Indirectly on that par-
1715 ticular date the stock was owned by the New England Navigation Company.

Q. That was a wholly owned subsidiary? A. That was a wholly owned subsidiary of the New Haven.

Q. Can you tell us the market prices of Connecticut Railway & Lighting bonds on October 23, 1935?

Mr. Martin: Will the witness please state where he got this information when he states it, please?

A. I had a search made for me of the official
1716 New York Stock Exchange quotation sheet dated October 23, 1935, and the information furnished me on that basis was that the stamped bonds were 107½ bid, and there was one thousand par value sold at that price, and the unstamped bonds were 109 bid.

Q. No sales? A. No, none at all.

Hincks, *J.*: What bonds were these?

Q. (By Mr. Garfield) These were Connecticut Railway & Lighting bonds, the 4½ of 1951? A. Yes, 4½.

Q. Are you familiar with the stipulation which 1717
has been introduced and marked Exhibit 1 for identification in these proceedings? A. I was familiar with it at the time.

Q. Do you recall that in one of the paragraphs of that stipulation there are figures showing the net earnings of the C. R. & L. property for the year ended October 31, 1936? A. Yes, sir.

Q. Do you recall that in that paragraph there is a figure shown for depreciation included in these earnings or deducted before arriving at these earnings? A. I do.

Q. Can you tell us whether that depreciation 1718
figure covered only property which was turned back to the C. R. & L. on November 16, 1936? A. No, sir, it included depreciation on property which was not turned back to the C. R. & L.

Q. As well as some—. A. As well as some that was turned back to them on which any depreciation did——. To make the record clear I might say that the depreciation was accrued on the property which was within the so-called territorial limits of the Connecticut Railway & Lighting Company, but not all that was re-possessed by them.

Q. Now, Mr. Leete, I want to ask you some 1719
figures in connection with the books of account of The Connecticut Company. Do you in these books show separately improvements on leased property? A. As differentiated from owned property?

Q. As differentiated from owned property? A. Yes, sir.

Q. Do you subdivide the figure for improvements on leased property as between that of the C. R. & L. and other leased property? A. That has been done, yes, sir.

1720 Q. That was done prior to the time that the C. R. & L. property was returned to it? A. Yes, sir.

Q. At the time the lease was made back in 1906 what did the accounts for improvements on leased property belonging to the C. R. & L. show?

Mr. Martin: Well, I object to that. In the first place I don't know what it is he is asking for, and in the next it is simply a self-serving declaration by the debtor himself, which cannot prove anything to his advantage.

1721 Hincks, J.: How is it material?

Mr. Garfield: To show that the account showed zero at that time. It was a new account, of course, and when we first took over the C. R. & L. property, there was nothing in it.

Hincks, J.: I think we can safely admit it to show zero. Is that the witness' answer?

Q. (By Mr. Garfield) Is that the answer? A. With due deference I would like to change his honor's answer to say that The Connecticut Company had not leased the Connecticut Railway & 1722 Lighting Company at that time. I understood your question to apply to The Connecticut Company.

Q. Quite right. I find it very difficult not to fall into the same error as Mr. Martin. At the time of the sublease in 1910 did The Connecticut Company's account for improvements on property leased which belonged to the C. R. & L. show zero? A. Yes, sir.

Q. What did that account show on October 23, 1935?

Mr. Martin: I object to that on the ground that it is immaterial and irrelevant, and that

it is a self-serving declaration if it is any- 1723
thing.

Hincks, *J.*: Overruled.

Mr. Martin: Exception.

A. The account showed investments and improvements on the C. R. & L. property in the amount of $5,229,679, even dollars.

Q. In the answers which we filed to the C. R. & L. proofs of claim based on information received from you, Mr. Leete, we said that the capital cost of such property was in excess of $6,000,000. Why did we say that?

Mr. Martin: Just a minute. I don't be- 1724
lieve the witness knows why he said that, and I would like to find out in some way what he does know.

Q. (By Mr. Garfield) Did you tell us that the cost was in excess of $6,000,000? A. Yes, sir.

Mr. Martin: Excuse me. Who is "us?" The New York, New Haven & Hartford Railroad Company?

Mr. Garfield: I really meant Mr. Wells and myself who prepared the answer.

Mr. Martin: Excuse me for continuing. 1725
What answer are you talking about? The New Haven Road's?

Mr. Garfield: Both the New Haven Company's answer and The Connecticut Company's answer.

Q. (By Mr. Garfield) Why did you give us that statement that the property exceeded $6,000,000 when you have just said that the account showed five million two hundred odd thousand?

1726 Mr. Martin: I object to that on the ground that the motive of the witness is immaterial.

Hincks, *J.*: Sustained as to form.

Q. (By Mr. Garfield) Do you believe that the statement that that property cost in excess of $6,000,000 was correct as of October 23, 1935?

Mr. Martin: I object because the witness' belief is immaterial.

Hincks, *J.*: He is an expert accountant entitled to form opinions from the books he handles. Do you differentiate between opinions and beliefs, Mr. Martin?

1727 Mr. Martin: Well, if he means, in your opinion was that correct, I will let the question go that way. Will that be all right, Mr. Garfield?

Mr. Garfield: I don't believe I follow you.

Mr. Martin: Do you want the witness' opinion as to the correctness of that figure?

Mr. Garfield: I do.

Witness: In my figure the $6,000,000 was correct for what it was stated to represent.

Q. (By Mr. Garfield) It was not a figure of $6,000,000? It was a statement that the capital 1728 cost was in excess of $6,000,000. Was that correct in your opinion? A. That is correct.

Q. Will you explain why you believe that was correct, when the book showed five million, two hundred odd thousand? A. I should like to. The reason for that was that the $5,229,000 was the figure that happened to be on the books at that time as representing that investment, but I know from analysis of the accounts that I had made that retirements of certain original C. R. & L. property had been credited to that account, which,

of course, was an error, because they had never 1729
been charged to that account.

Q. When you say "original C. R. & L. property," do you mean property that was in the possession of the C. R. & L. before the original lease was made? A. Well, will you let me explain that? There might have been some line which was originally constructed by the C. R. & L. and leased to The Connecticut Company, and then improvements may have been made on that line by The Connecticut Company, and the cost of those improvements would have been charged to this account in question. Subsequently this entire line 1730
was abandoned, and through error the estimated cost of the entire line had been taken out of this account on The Connecticut Company's books instead of dividing it into two parts, namely, the original C. R. & L. property and the money which The Connecticut Company had spent there. That was the explanation of the difference between the book figure and what I consider the rail cost.

Q. Now, in the statement which you gave us and which we included in the two counterclaims you said that the capital cost was in excess of $6,000,000, of which approximately three and one-half million dollars was expended for such improve- 1731
ments as were still in service on October 23, 1935. Is that true? A. May I see that, Mr. Garfield? (Receiving a paper.) Yes, sir.

Q. Mr. Leete, have you been furnished a list of extensions of C. R. & L. property beyond the locations to which its lines extended in 1906 extensions made by The Connecticut Company and still in existence on October 23, 1935?

Mr. Martin: I object to that question. If he was furnished with a list, let's see the list

1732 and have it identified and have its contents explained.

Hincks, *J.*: I assume it is just a preliminary question leading right up to the method you suggest. Isn't that so, Mr. Garfield?

Mr. Garfield: Yes, sir.

Mr. Martin: I suggest that the witness tell us all about the list. Mr. Garfield has testified what the lease is. I don't know whether it is that or not.

Mr. Garfield: I may say, your honor, that this list will have to be proved by another witness. I would like to identify it in some
1733 way and then ask Mr. Leete some questions about the value of the property shown on it. But Mr. Leete himself cannot testify as to what the list contains, but only as to the values of the properties.

Hincks, *J.*: I suggest you mark it for identification.

By Mr. Garfield:

Q. I show you a statement entitled "Extensions made since the Date of the Lease October 1 1906 to C. R. & L. Trackage now in Operation October
1734 23 1935," and ask you whether that is the list to which I have just referred. A. Well, that is a copy to which you have just referred.

Mr. Garfield: I ask that this list be marked for identification.

(The list referred to was then marked "Respondents' Exhibit 101 for identification.")

By Mr. Garfield:

Q. Now, Mr. Leete, I am not asking you whether that list correctly represents what it purports to

portray, but I am asking you whether you have 1735
taken the properties described thereon and have determined their values?

Mr. Martin: I object to that, unless the witness is shown to be an appraiser.

Hincks, *J.*: When you say "values" don't you mean book costs? What do you mean?

Q. (By Mr. Garfield.) I will change the form of the question, your honor. Have you, Mr. Leete, taken these properties and determined the book costs as nearly as you are able to do so?

Mr. Martin: I object to that because the 1736
book cost is a conclusion. We have no idea how he arrived at it or whether he is qualified.

Mr. Garfield: Just a preliminary question, your honor.

Hincks, *J.*: Overruled.

Mr. Martin: Exception.

A. I have determined the book cost in respect only of that part of these improvements represented by expenditures since December 31, 1926.

Q. What have you done with regard to the bal- 1737
ance? A. The balance is an appraisal based upon the detailed valuation work which the New Haven made of The Connecticut Company in 1925, 1926 and 1927.

Q. What has been your experience in valuation work? A. I was one of three, I believe, who formed a nucleus of the Valuation Department in the New York, New Haven & Hartford Railroad Company in 1913 when the federal valuation of railroads first became a live subject. I was continuously in the Valuation Department from that date until the department was merged with

1738 the Accounting Department in 1930. During that time I was engaged in almost every ramification of valuation work that there was except the legal end of it involving the charge of field parties and active appraisals and pricing, making the inventories and their extensions and all railroad matters of that nature.

Q. Was your work limited to the steam railroad property of the New York, New Haven & Hartford Railroad Company? A. No, sir. In 1925 I think it was our department was requested to make valuations of several of the New Haven
1739 subsidiaries, among which was The Connecticut Company.

Q. Did you do so? A. And such a valuation was made.

Q. Was all of The Connecticut Company's property including the C. R. & L.'s property valued on that basis as of 1926? A. Well, I would like to explain my answer. All the property owned and used by The Connecticut Company was subjected to this valuation. When you say "that basis" it is not quite certain to me what you mean.

Q. It was all valued at that time? A. It was
1740 all valued at that time, yes, sir.

Q. What was the basis of valuation? A. Well, one of the elements which went to make up the basis was to price the physical property at the plane of prices which applied to the pricing period 1910-1914 inclusive. That period was adopted because that was the pricing period used by the Interstate Commerce Commission for all railroads in the federal valuation, and we desired to make this one on a comparable basis.

Now, of course, other factors were taken into consideration in determining what you might call

final value, but in so far as these figures are con- 1741
cerned which we are discussing, I used these 1910-1914 prices for the property which was found to be in existence—which was inventoried in 1926, and was still in existence in 1935. For any property which came into being after 1926, as I stated earlier, I used the actual recorded cost. So that I would like it understood that the sum of these figures is not any sort of value that I could define as a valuation engineer, but it is simply a base line from which to start.

Q. See if I can sum that up. You have taken these properties shown on Exhibit 101 for iden- 1742
tification, and have put on each a dollar figure which represents either the cost if the property was acquired after 1926, or the 1910-1914 value if it was acquired before that time? A. That's right.

Hincks, *J.*: When you say "before that time" you mean before 1926?

Q. (By Mr. Garfield) By December 31, 1926? A. Yes, sir.

Q. Have you made up a statement showing the costs on that basis of the properties listed in Exhibit 101 for identification? A. I have. 1743

Q. Is that the statement? A. That is the statement, yes, sir.

Q. Is that correct to the best of your knowledge and belief? A. Yes, sir.

Q. It was made up in the manner which you have described? A. Yes, sir.

Mr. Garfield: I offer that as Exhibit 102, your honor.

Mr. Martin: It is objected to on the ground that it is irrelevant and immaterial and incompetent.

1744 Hincks, *J.*: What is the purpose of it?

Mr. Garfield: Under the terms of the lease, your honor, there are two different sorts of specifications and improvements. If you will turn to page 19 just above the middle of the page, you see the figure four in parenthesis in the middle of the lease: (Reading)

"If the lessee retained the consent of the lessor, shall have extended the mileage of the lessor railroad by constructing tracks * * * under franchises abandoned in the name of the lessor."

1745 Hincks, *J.*: In other words you are offering this under a counterclaim?

Mr. Garfield: Under a counterclaim, yes, your honor.

Hincks, *J.*: I don't think anybody has shown me any counterclaim or answer in this proceeding. Perhaps it is about time I was furnished with one.

Mr. Garfield: That is a serious oversight, your honor. It was part of the printed record.

Hincks, *J.*: Printed record of what?

Mr. Garfield: Of both The Connecticut Company proceeding and the New Haven proceeding.

1746

Hnicks, *J.*: I didn't know there was a printed record in The Connecticut Company proceeding.

Mr. Garfield: In any event, your honor, the claims of the C. R. & L. which were brought here the day before yesterday have attached to them, or at least there are with them the answers and counterclaims filed by The Connecticut Company and the New Haven.

Mr. Martin: I object to evidence on the further ground that there has been no written

consent of the lessor shown to these supposed 1747
extensions, and that there has been no appraisal by representatives of the parties, or by a third party chosen for that purpose by the Chief Justice of the Supreme Court of Connecticut, as provided in the lease.

Hincks, *J.*: These are provisions of the lease on page 19 of the book?

Mr. Martin: Yes, sir.

Hincks. *J.*: What do you say to that, Mr. Garfield?

Mr. Garfield: As to the first point we will supply the defect. We have not yet had a 1748
chance to prove the written consent, but we will do so.

As to the second point, this is not an arbitration, as your honor may have surmised, and therefore is not technically within this paragraph. On the other hand, this proceeding appears to us to be one in which we are entitled to state the counterclaim which we have, whether it is of a legal or equitable nature.

If the C. R. & L. wishes to arbitrate we will be very glad to arbitrate this provision. We had supposed that it would be easier and simpler for all concerned to have it adjudi- 1749
cated in this proceeding.

Mr. Martin: The answer to that is he has not proved any counterclaim pursuant to Paragraph 4 on page 19. So I renew my objection to this evidence.

Hincks. *J.*: Isn't the obligation of the lessor solely conditioned upon termination for any cause except the default of the lessee?

Mr. Garfield: No, your honor. You are now reading Clause 3 of that paragraph, which relates to other sorts of improvements and

1750 extensions of the property. Clause 4 relates only to a particular type of extensions to roadway property outside of the locations in existence in 1906. As to that property we are entitled to be paid the value of whatever the C. R. & L. takes back at the end of the lease, on the termination of the lease for any cause.

Hincks, *J.*: Do you object, Mr. Martin, in part on the ground that the value of this property, assuming property of this class stands, in fact, in actual existence, has not been determined by the methods of arbitration set forth?

1751 Mr. Martin: Not only not by the methods but not at the time; not by the persons who were to determine that value. It says in the first place there shall be an equitable adjustment of accounts at the time of such delivery of possession (page 18). Then it says, "If the lessee with the written consent . . . etc." The written consent of the lessor has not been shown. Then it says: "On the termination of this lease the property appraised at the time of the termination of this lease as physical property in the manner stated

1752 above . . ." Now, it has not been appraised in the manner stated above, and it has not been appraised at the time of the termination of the lease.

Hincks, *J.*: I think in view of the relations between the parties since the termination the matter of time is not so important as the matter of the manner of determination. Why isn't C. R. & L. entitled under the lease to ask for arbitration if it wants to? Mr. Martin now says that it is.

Mr. Garfield: I am not denying that it is, your honor. Of course, the lease has now been rejected by The New Haven, and whether that would change that right I haven't considered. If the C. R. & L. wants to insist upon arbitration and take this part of the case right out of your honor's hands, I don't know that we should object. It seemed to us very foolish to have one tribunal pass upon that little part of the matter and your honor pass on all the rest of it. 1753

Hincks, *J.*: It may seem foolish from your standpoint. It would be no disappointment to me to see this section here or any other taken out of my hands. If the C. R. & L. wants to arbitrate it,—— 1754

Mr. Martin: I perhaps should hasten to correct that conclusion. The C. R. & L. has no intention of arbitrating it and no intention of waiving any rights that it has under the lease. The obligation of the lessor is to return the demised property. It has not done that. Then it was agreed at the time of such delivery of possession, meaning delivery in such a manner as to be fit for immediate use of the lessee, there should be an equitable adjustment of accounts. Then we get to paragraph 4 under that equitable adjustment and we find that there are certain provisions there which have not been complied with even in paragraph 4. To put Mr. Leete on the stand as an appraiser to appraise the property—I don't know as of what date—I don't even know if this is the property mentioned in paragraph 4—in order to prove a counterclaim certainly is not proving a counterclaim under the lease. It may be proving a *quan-* 1755

1756 *tum meruit* or something like that, but it certainly is not under the lease.

Hincks, *J.*: I am in some perplexity because I understood you to say first that you wanted to arbitrate.

Mr. Martin: I don't want to arbitrate.

Mr. Garfield: In effect he is asking us to forfeit this property.

Mr. Martin: Yes, I am.

Mr. Garfield: Which under the lease we have a right to be paid for on the termination of the lease for any cause.

Hincks, *J.*: Is this an accurate statement
1757 of your decision, Mr. Martin, that in so far as clause 4 stated on page 19 of the lease book gives C. R. & L. the right to arbitrate the class of items described therein, you waive that right but you waive nothing else?

Mr. Martin: Pardon me. I should correct your honor right at the threshold. I don't intend to waive any rights. What I have done is to object to a question which obviously was based on this paragraph 4. He was going to use Mr. Leete as an appraiser, when there was absolutely no provision in
1758 the lease for doing that.

Hincks, *J.*: I appreciate that there are other grounds for objection, but there is one which seems to me to be fundamental, and I have got to know your position before ruling. It seems to me that he clearly stated that if C. R. & L. wishes to insist on the rights of arbitration provided for in clause 4, that is its right. I should enforce it.

Mr. Martin: Well, I am not going to arbitrate the value of this property, but I don't waive my right not to have someone else ap-

praise it in the way they are trying to prove it now. 1759

Hincks, *J.*: Do you waive any right that C. R. & L. has to claim an appraisal of it in the manner provided?

Mr. Martin: No, sir.

Hincks, *J.*: In the absence of such waiver I don't see how we can go forward on the counterclaim.

Mr. Garfield: If your honor please, I think this is properly to be considered as an equitable counterclaim as differentiated from a legal counterclaim, if Mr. Martin takes that attitude. The result of that attitude apparently is that we are to be deprived of the right to arbitrate the value of this property. 1760

Hincks, *J.*: I don't see how, Mr. Garfield. It seems to me that the provisions are plain. If the C. R. & L. does not waive that right you should ask them to agree upon the value, or you should ask to have the value fixed by representatives of each of the parties, and in case they cannot agree, by a third to be chosen by the Chief Justice of the state. What is there to prevent your following that program? If thereafter no representative is designated by C. R. & L., we have a different situation. 1761

Mr. Garfield: I will now formally ask Mr. Martin if he will accept the figures shown on this statement as the value of those extensions at the time of the termination of the lease?

Mr. Martin: No, I won't.

Mr. Garfield: And I will formally ask Mr. Martin if he will forthwith as soon as reasonable appoint a representative to fix the value

1762 of those extensions as of the time of the termination of the lease?

Mr. Martin: No, I won't do that either.

Mr. Garfield: Then I renew my offer of this exhibit, your honor.

Hincks, *J.*: I will admit the exhibit subject to connection; that is, subject to motion to strike in the event that the respondents do not subsequently connect it with evidence identifying the property and also evidence showing that the extensions were with the written consent of the lessor.

Mr. Martin: Exception.

1763 Hincks, *J.*: Exception.

(The statement referred to was received in evidence and marked "Respondents' Exhibit 102.")

By Mr. Garfield:

Q. This statement, which has been marked Exhibit 102, contains in the heading and also in the heading of two of the columns the date December 17, 1935. Can you tell us whether the figures shown would have been the same as of
1764 October 23, 1935? A. To the best of my knowledge and belief, Mr. Garfield, they would be. I should like to explain why I answered that way. I doubt if any property was abandoned between those two dates without the knowledge and consent of the C. R. & L.

Q. I will put the question this way. Assuming that there was no change in the property described in that exhibit between October 23, 1935 and December 17, 1935, would the money figures be the same on both dates? A. Yes, sir.

CROSS-EXAMINATION BY MR. MARTIN: 1765

Q. Mr. Leete, I show you this copy of Exhibit I, which you remember. That is the stipulation? A. Yes, sir.

Q. I invite your attention to paragraph 6, and in paragraph 6 it says: ". . . after depreciation accruals in the aggregate amount to $179,089.59." Those depreciation accruals were taken against property that was supposed to be turned over to C. R. & L., weren't they? A. No. I tried to make that plain.

Q. But it wasn't plain to me and I didn't understand. A. Let me make it as plain as I can. 1766
There was quite a little of equipment stored in Derby and Bridgeport and I think perhaps Waterbury, and I remember I was at a conference in Mr. Wells' office when you were there. And you said you did not care about that equipment. So that that equipment was not turned back to you.

Q. Oh, I didn't ask you that. A. Well, I was trying to explain the reason for this difference.

Q. Yes. A.——was accrued on all——.

Q. It was accrued entirely on property in C. R. & L. territory? A. Yes.

1767

Q. And it does not include any property that was in The Connecticut Company territory, does it? A. No, sir, I think not.

Q. That is what I wanted to make plain. That is all.

REDIRECT-EXAMINATION BY MR. GARFIELD:

Q. You say that that item of $179,089.59 included depreciation on property physically within C. R. & L. territory but not subsequently taken back by C. R. & L., is that so? A. That is so.

1768 By Mr. Wells:

Q. Because C. R. & L. didn't want it back?

Mr. Martin: Wait a minute. That is a conclusion.

By Mr. Garfield:

Q. Was that property offered to C. R. & L.? A. That property was offered to C. R. & L. in my presence.

Q. And they didn't take it back? A. Well, the
1769 offer was refused in my presence.

Recross-examination by Mr. Martin:

Q. That is, The Connecticut Company offered that property to C. R. & L. and thereby suggested that it was C. R. & L. property, is that right?

Mr. Garfield: Just a minute. They offered it. That is what they did.

Charles Rufus Harte, New Haven, Conn.,
1770 called as a witness in behalf of the respondents, being first duly sworn, testified as follows:

Direct-examination by Mr. Garfield:

Q. Mr. Harte, will you state your business? A. I am a civil and electrical engineer. I haven't the degree of electrical but I qualify as such.

Q. And in whose employ? A. By The Connecticut Company.

Q. How long have you been employed by The Connecticut Company? A. By The Connecticut Company as such since about——

Q. 1910? A. I can't say just when the change 1771
was made.

Q. Prior to that were you employed by the Consolidated Railway Company? A. By the Consolidated Company and New Haven Railroad Company.

Q. When did you enter their employ? A. I went to the New York, New Haven & Hartford Railroad Company on graduation in 1893.

Q. Graduation from where? A. Columbia School of Mines.

Q. You are a mining engineer? A. No, civil engineer.

Q. While you were with the New Haven and the 1772
Consolidated Railway, what were your duties? A. From 1893 to 1900 and from 1904 to 1906 I had heavy railroad construction—trackage and road crossing elimination and the like, but from 1906 until about in 1914 or 1915 I was in charge of all electrical railway construction other than the electrification of the steam roads—of the steam railroad service.

Q. In that capacity were you in charge of all electrical railway construction for the Consolidated Railway Company and later for The Connecticut Company? A. I was in charge of the 1778
bulk of the construction for the Consolidated. Some of it was done by the maintenance engineer. I may say that for a period of eight or nine months I was in charge of the maintenance work for the C. R. & L. properties, which we had just taken over.

Q. When was that period? A. Officially I was in charge from February, 1907 to about the first of October, 1907. I acted as consultant from the time on December 20 when the notice was issued that we had the properties until early in February, when I was officially in charge of the maintenance work.

1774 Q. I understood you to just say that the C. R. & L. property was officially taken over by the Consolidated Railway Company on December 20, 1906? A. The official notice was sent out under date of December 20, 1906.

Mr. Garfield: Your honor will recall that the lease was signed on the 19th of December, 1906. It related back to August 1, 1906. Mr. Harte has testified that the property was actually taken over on December 20.

Q. (By Mr. Garfield.) Prior to December 20, 1906 and the 1st of February, 1907, you were
1775 charged with the duty of supervising maintenance and construction on the C. R. & L. property in a consulting capacity? A. Both supervising that and really the consulting work was more with relation to those Connecticut Railway & Lighting authorizations which had been turned over to us incomplete, and on which there were accounting questions and engineering questions as to carrying out certain work that had been projected and was not under way, and the question of taking care of a large part of the orders which had been placed that were not in accordance with our
1776 standard.

Q. Does that mean at the time the property came over on December 20 there were various construction and maintenance jobs actually in process unfinished? A. I should say there were about two hundred.

Q. Did you take charge of the completion of that work? A. At the time it came over I was called in consultation over the question about what should be done from an engineering point of view, and the question of who should handle it was left to the Connecticut Railway Company

management. We got practically the entire 1777
organization except the president.

Q. After February 1, 1907 just how did your duties change? A. Mr. M. E. Stark, who was the roadmaster of the C. R. & L., was instructed to report to me on engineering matters. He was the engineer in charge of the maintenance and the what we used to term the maintenance and construction. That was the extension of lines, building of short sidings and other things that were tied in so closely to the every-day maintenance work that it was better to handle it directly that way. On the managerial phase of it as to 1778
whether or no work should actually be carried out he and I prepared the reports, and I was responsible for their going forward. And that was ruled upon quite a few times by Mr. Reynolds. He was acting as assistant general manager in charge of Connecticut Railway & Lighting work and reported to Mr. Sewall, and I reported directly to Mr. Townley on the maintenance.

Q. Mr. Townley was the vice-president of the Consolidated Railway Company? A. Vice-president in charge of the electrical department; Mr. E. H. McHenry, vice-president, was in charge of the engineering. 1779

Q. Now, you continued in that capacity until early in October, 1907. After that what did you do? A. In October, 1907 I was relieved of the maintenance of the C. R. & L. work because of very heavy construction work that I was carrying on for the Consolidated in Vermont, Massachusetts, Connecticut and in New York and quite a little heavy construction work on the C. R. & L. properties—extension work.

Q. After that did you have a consulting or supervisory jurisdiction over the C. R. & L. prop-

1780 erty? A. Not as to maintenance. Maintenance was then handled through the regular Consolidated maintenance of our organization.

Q. But did you have as to construction? A. As to construction I did.

Q. Did you continue in that capacity and if so, for how long? A. There was no distinction made then between the C. R. & L. territory and the Consolidated.

Q. Beginning when? A. From the time we heard it. Our understanding was that we owned the property. I don't think I knew of the terms of the lease for a number of years. The one
1781 thought was here was property that was part of the property, and it was to be worked into a common system. There was a distinction on the accounting. That was the only distinction made.

Q. Didn't you say that you were in charge of the maintenance and construction for nine months of the C. R. & L. property? A. I spoke of it in that way. It was the property that had come to us from the C. R. & L., and as far as I knew it was our own just as much as everything else.

Q. But during those nine months you were working solely on the property that had come
1782 from the C. R. & L.? A. Yes, the reason for that being that the general organization had not been perfected as to taking care. The C. R. & L. had an organization with which it took over and presently worked it into shape.

Q. Were you thoroughly familiar during those nine months with the property that had come over from the C. R. & L.? A. Quite familiar with it.

Q. Was it a part of your duties and responsibilities to be familiar with portions of it? A. I was.

Q. What portions? A. As far as that is con- 1783
cerned I had to be familiar with all of it that was in particularly bad condition.

Q. Was there a great deal of that? A. There was a very considerable proportion.

Q. Were you also familiar with the other properties of the Consolidated Railway at that time? A. I was.

Q. Was it your duty during those nine months to investigate and report upon the condition of the properties that come over from the C. R. & L.? A. It was.

Q. Did you do that? A. I did. 1784

Q. Did you form a judgment as to the condition of the property and whether anything was necessary to be done to it? A. I did.

Q. Did you make recommendations to anyone about it? A. My work was more in approval of the set-ups in the field, and then I was held responsible for seeing that the reason did exist and for reporting on that fact.

Q. In other words, conditions were called to your attention by other people sometimes, but you were responsible? A. I was the responsible person for having the matter go forward.

Q. Did you hear Mr. Bennett's testimony this 1785
morning about authorities? A. I did.

Q. Did you have anything to do with originating the recommendations which subsequently resulted in authorities being issued? A. I did.

Q. After the authority had been issued, did you have charge of doing the work required thereby? A. I should say a very large part of the work that was done came directly under my charge. There was some of it that did not.

Q. Going back to the work which you referred to a while ago as having been begun before the

1786 property came over from the C. R. & L., I think you said you had general supervision over carrying on and completing that work? A. I did.

Q. Did you in that connection have to approve bills for that work? A. When the work was completed I did.

Q. Did you see approved bills? A. I did.

Q. To whom did you send them when you approved them? A. Those went to Mr. C. L. Campbell, who was then our auditor.

Q. Auditor of what company? A. Auditor of the Consolidated.

1787 Q. I show you exhibit 103 and call your attention to the last two lines on the first page reading "Expenditures C. R. & L. Company—Co-authorization August 1 to December 31 $401,231. Explain what that means.

Mr. Martin: I object to that question. This witness did not compile this memorandum, and he has not been shown to be capable of interpreting——

Q. (By Mr. Garfield) I will withdraw the question. Referring to the item on Exhibit 103, to which I have just referred, did you actually carry
1788 out work which had been authorized by the C. R. & L. on C. R. & L. property before the property came over to you?

Mr. Martin: I object to that question. The witness has not testified so far about any authorization.

Hincks, *J.*: Three or four questions in one there.

Q. (By Mr. Garfield) I will start over again. This work that you supervised which you say had been begun by the C. R. & L. before the property

came over and as to which you authorized pay- 1789
ment of bills and sent the authorities to the Consolidated auditor—— A. May I just raise a point? The authorizations which I sent to the auditor were not the authorizations which had been made presumably by the C. R. & L. and which had been turned over to us. They were covered, except as a bookkeeping matter, at a later date by the authority, and the work that had been done by the C. R. & L. But I completed a large number of those projects which had been taken by the C. R. & L. presumably by someone on the property before it came into our possession.

Q. The work was actually done on C. R. & L. 1790
property? A. It was actually done on C. R. & L. property. That has been partly done when I got on.

Q. It was completed under your supervision? A. It was completed under my supervision.

Q. And you approved the bills for that work? A. I did.

Hincks, *J.*: Are you limiting these questions to the specific item to which you directed his attention?

Mr. Garfield: I am limiting these questions 1791
to the type of work, your honor, the work which had been begun before the property came over.

Q. (By Mr. Garfield.) Now, as to that work, had there been authority issued by the Consolidated Railway Company before the work started? A. No, sir.

Q. Was the approval of the bill by you so far as you knew the first authority which the Consolidated Railway Company had given for that work?

1792 Mr. Martin: I object to that question.

Hincks, *J.*: I don't understand what you mean by bill. Bill for the cost entering into these items? I didn't understand that this witness had to do with such approvals. I understood his testimony to be that he approved authorities for the performance of the work and not for the payment of the work after it was done. In the light of that confusion won't you make your question plain? What do you mean by "bill"?

1793 Mr. Garfield: I am sorry that my question confused your honor. I first address one line of questions relating to the authorities which were issued by the Consolidated beginning in 1907, which originated with Mr. Harte in many cases. I am now addressing myself to payments for work which had been begun before 1907, which is a different subject.

Q. (By Mr. Garfield): Now, as to this work which had been begun before the property came over to you, and which was completed under your supervision, I understand you to say that as that work was completed you did something to authorize payment for it. What was it you did? A. It was more than that. When the work came to us as of December 20, 1906, these matters were under our—— There was material that had been purchased; material that had been ordered, and in some cases there were contractors who were under a contract, and in those instances before any payment was made by the Consolidated, I endorsed personally upon that bill, upon my own investigation, as to whether or no the contractor or supply man or whoever had made the claim, was entitled to payment, and whether the payment should come

on that bill, and how it should be distributed ac- 1795
cording to the distribution of accounts in effect at that time. I was responsible for the certification to the auditor that here was work which had been properly done as part of the completion of a project, and that it was proper for him to pay the bill. And at the end of the work I had to make a detailed statement against the charges as to why there was any discrepancy between the amount that had been set up in the estimate and what was actually expended.

Q. Do you know approximately the total amount that you so approved and authorized? A. At what 1796
time?

Q. On the work that came over unfinished from the C. R. & L.? A. No, I couldn't tell you that. I simply know that I had seen a set-up of the entire amount of that character, which was the four hundred and some thousand dollars. I certified to a part of it. I should say a very considerable part, but at this date I have no way of telling how much authority I certified to. I am under the impression that it was about between three-quarters —somewhere between three-quarters and let's say seven-eights, but I couldn't say as to that definitely. 1797

Q. Now, as to that work which was authorized by the Consolidated Railway during the first nine months of 1907 did you have charge of undertaking and carrying along parts of that work? A. I did.

Hincks *J.*: You are talking now about new projects?

Mr. Garfield: New projects, your honor.

Q. (By Mr. Garfield): In carrying out that work as a part of your regular routine duties did

1798 you keep track of the amounts that were expended or the amounts of liabilities that were incurred as a part of the work that was done? A. I did to a considerable extent. There was a report to make every month. The auditor's statement of what had been expended on every account against each one of the accounts. That was a check and at the end I had to certify that the expenditures were correct but I didn't keep an individual record myself of those matters. I had the amounts of money that were allowed to me to do the work.

Q. You kept a little record as to how much of those amounts were accurately spent? A. I had
1799 to check it. I didn't keep a permanent record. It was merely that a certain form went through my hands, and it was endorsed with the fact that this was correct.

Q. So that you saw the amounts that were stated by some one to have been expended or incurred, and you checked them and decided that they were correct in the light of the work that you had done? A. I decided whether they were correct. In a good many instances there came items and amounts considerably in excess of the amounts that I had passed. Then the question
1800 was raised why this added amount was charged.

Q. You didn't approve unless you were convinced that the amount had been spent? A. That's true.

Q. Did you keep a personal record of the amounts that you thus determined had been properly spent? A. No, I didn't keep a record of the authorizations. As an authorization was approved by the president a memorandum was sent to every one of the officers who was in any way concerned with it, and I insisted that I have a full list of those in order that I might have a

check. I kept a little record of those, merely a brief notation as to the authorization number and what was covered and the amount of money authorized. In a few instances as to the date of issuance of that authorization. In most cases that was not put on. 1801

Q. Have you that record in your possession? A. Yes.

Q. Have you looked at it recently? A. Yes.

Q. Have you studied it very carefully during the last few days? A. Yes.

Q. Can you tell us during the nine months' period, during which you were in charge of the C. R. & L. property, from February to October, 1907, what the total of the items relating to C. R. & L. property is? 1802

Mr. Martin: If it is the best recollection recorded, the record itself should go in evidence.

Hincks: *J.*: Sustained.

Q. (By Mr. Garfield) Will you show me your book?

Hincks, *J.*: (Receiving book from Mr. Garfield). Any objections? 1803

Witness: I might say that you find it is a duplicate record. The first half lists the requisitions numerically; the second one has them set up alphabetically for quick convenience and reference.

By Mr. Martin:

Q. This page was made recently? A. That was a note. You may have that surely.

Q. If I took that page out, Mr. Harte, could you find the answers to those questions? A. It

1804 was as a marker. That really doesn't belong with it at all. I will put it in another place.

Mr. Martin: I object to it on the ground that it is irrelevant and immaterial.

Hincks, *J.*: What is its purpose?

Mr. Garfield: It is offered as evidence of the correctness of the amounts stated in connection with the work done on C. R. & L. from February to October, 1907—work done under Mr. Harte's direction.

Hincks, *J.*: How is that material? What was done in 1907?

1805 Mr. Garfield: Your honor raised a question as to these authorities, whether the money had been spent or whether they had been merely authorized. I had originally intended to offer them merely as authorities, but your honor seemed interested in the expenditures. I asked Mr. Harte to tell us how much he had spent during those nine months. If your honor is not interested I don't know that I shall press it.

Hincks, *J.*: To tell the truth I don't know whether I am interested in it or not.

Mr. Garfield: Then I think I will press it.

1806 Hincks, *J.*: I will struggle as best I can to keep abreast of your acute mental processes. I am afraid I am a lap or two behind.

Mr. Martin: If it is offered as evidence of money that has actually been spent, I object to it on the further ground that I don't think it even purports to show that. I think it only purports to show money which Mr. Harte approved to be spent.

Mr. Garfield: I am willing to limit it in that way. I want to show that the work was done, and I am identifying the work by the

total amount of money that the authorities carried for that work. 1807

Hincks, J.: Are you offering it now to please yourself or to please me?

Mr. Garfield: To please myself, your honor. If your honor is really behind me, I don't dare refrain from offering it until you have caught up. I am quite ready to withdraw that offer and ask Mr. Harte the total amount of money, which is my next question, but if it is going to be objected to——

Hincks, J.: I haven't got it clearly in my mind what your theory as to expenditures is. Are you trying to show now that there were certain general deficiencies in the property in 1906? 1808

Mr. Garfield: Yes, your honor.

Hincks, J.: You don't propose to connect any claimed specific deficiencies existing then with those which Mr. Martin is claiming as of November, 1936?

Mr. Garfield: Not specific instances, no, your honor. I am seeking to measure deficiencies by class of property just as he has done, but I am not comparing an individual trolley car in the two periods. 1809

Hincks, J.: Are you offering this under a counterclaim in defense to the main claim?

Mr. Garfield: As in defense to the main claim on deficiencies, your honor.

Hincks, J.: I question whether it is material unless you are going to connect it with specific items. Let me express my confused view of the subject matter and see if you agree. In 1906 if the property was deficient with respect to item A and the property was transferred, and if in 1936 the property was

1810 deficient with respect to item B when the property was re-possessed, under the provision of the lease to which you called my attention I fail to see how the deficiency in item A is any defense against the later deficiency with respect to item B.

Mr. Garfield: On that basis, your honor, there would be very little to which comparative deficiencies could apply, because between 1906 and 1935 or 1936 a great deal of property had been changed in form entirely. Not only had most of the trolley lines

1811 been abandoned, but of course most of the actual equipment, even though it was still trolley equipment, had been worn out and replaced. Many of the biuldings had been replaced, or were even in a different place. It would be possible in no more than a few cases to compare the identical property at the two times, and I don't think that that is what the lease intends.

Hincks, *J.*: I am not sure that I agree with you there as to the intent of the lease, because I should rather say—I am not inclined to say without studying it—that when the

1812 lease was executed the parties necessarily must have contemplated a constant process of substitutions and conversions of the property.

Mr. Garfield: I have no doubt of it, your honor, especially if the lease were going to last for 999 years.

Hincks, *J.*: Therefore, when in the paragraph on page 18 of the lease book the lessee covenanted to return the property in such condition and wtih such equipment, etc., as to fully fit it for the immediate use of the

lessor in the same manner as at present, the parties must have meant that that limitation "in the same manner as at present" would have had application only as to items which still existed in the identical original form. 1813

Mr. Garfield: Do you think, your honor, that when the parties made a lease to last 999 years they contemplated that trolley cars operating on Main Street, Bridgeport would still be operating? It doesn't seem to me that that could have been their idea.

Hincks, *J.*: I think the point is well taken. I will say identical items or substituted items. 1814

Mr. Garfield: Do you think they even contemplated that there would be trolley cars on Main Street, Bridgeport after 999 years?

Hincks, *J.*: Yes, I think they contemplated that longer than that we should have——

Mr. Garfield: I take the "as in the same manner as at present" to mean the same quality of service, and possibly the same extent of service—same amount of service, but not necessarily the identical physical property, but if they turned over property to us which was some of it in unsafe condition and we turned back property which was all safe, even though perhaps it didn't have rider appeal, we have given them more than we bargained to give them. 1815

Hincks, *J.*: My present query is whether when with respect to any one item you give them less than you bargained to give them, you are entitled to defend against the claim on that item by saying that in other respects you gave them more.

1816 Mr. Garfield: That clause, your honor, refers to the demised property in the third line of the paragraph. The demised property is the property described in the first part of the lease, and means the trolley system as a whole, or the trolley, gas and electric systems as a whole.

Hincks, *J.*: You are struggling again with a point that has a very central bearing on vital parts of the claim. I don't mean permanently to evade every important issue, but I wonder if on this again I can reserve decision. It seems to me that matters of such
1817 importance ought to have careful study.

Mr. Garfield: You mean that this may be marked for identification and your honor will reserve ruling on Mr. Martin's objection?

Hincks, *J.*: Would that be agreeable procedure for the present?

Mr. Martin: Yes, your honor, it will.

May I make a further remark? I suggest that the second paragraph on page 16, whereby the lessee agreed that it would furnish all apparatus, and equipment and plant in
1818 substitution for and in addition to that hereby demised "which may be necessary or proper for such operation," rather bears out Mr. Garfield's remarks, which I agree with. That is, I think, with regard to busses, for instance, or apparatus furnished in substitution for the old trolleys I agree with the remarks that Mr. Garfield just made. On the other hand, I think that what they did is no proof that there was a shortage at the time. When I took the property back on November 16, 1936, we immediately went out and bought great quantities of material and

busses, but it hadn't occurred to me that what we did after we got the property back was going to be any proof of the necessities of the situation. It would only be proof of what we thought they were. 1819

And in the same way I object to the introduction of this testimony as to what the Consolidated Railway Company did after they got the property, as having no probative value with regard to what was necessary to do. What was necessary to do depends on the circumstances and the opinions of experts which we haven't got here.

Mr. Garfield: If your honor please, I think your honor may find some casual connection between what this gentleman did in authorizing and expending large sums of money to improve the property and what he thought was necessary to do. Furthermore, they were responsible. Mr. Martin's witnesses were not even responsible for the property. 1820

Hincks, *J.*: Are you content to mark this present offer for identification with a ruling reserved?

Mr. Garfield: I am content.

Mr. Martin: That is satisfactory. 1821

Witness: The numerical list is the contemporary list. These items are written down day by day. The alphabetical set-up is not quite in that form. It is the identical list, but that was made from time to time as opportunity offered.

Mr. Garfield: Then I will confine the offer to the numerical list at the beginning of the book.

(The numerical list in the book referred to was marked "Respondents' Exhibit 107 for identification.")

1822 By Mr. Garfield:

Q. Now, Mr. Harte, having studied Exhibit 107 for identification within the last few days, are you prepared to say approximately the amount of authorizations for work on C. R. & L. property as to which you found that the work had been done and entered your approval?

Mr. Martin: I object to that because the exhibit is the best recollection recorded, and has not been shown to refresh the memory of the witness.

1823 Hincks, *J.*: I understand the present question merely makes the witness an adding machine for the convenience of the court?

Mr. Garfield: That is the purpose of it, your honor.

Hincks, *J.*: I will be glad to accept that help when we come to that point. Overruled.

Q. (By Mr. Garfield) Will you state what that total amount is approximately, Mr. Harte? A. Approximately a million dollars. Between $900,000 and $1,000,000.

Q. During what period? A. That was during the nine months' period in which I was in 1824 responsible charge of the authorization issuance.

Q. What was the condition of the trolley track of the C. R. & L. at the time it came under your jurisdiction?

Mr. Martin: May I have a general objection to this line on the ground that it is immaterial and irrelevant.

Hincks, *J.*: I feel it is the same issue, gentlemen.

Mr. Garfield: It is all directed to the same issue, your honor.

Hincks, *J.*: The same ruling. That is to say, ruling reserved.

Witness: Various character of track. The property consisted of two broad groups. The city tracks which were old horse car tracks that had been in some cases improved, and in some cases were practically the old rail that had been there when the horse cars were used. In addition to that there was quite a little mileage of interurban track, and that ranged from fair condition to exceedingly good condition. One brand new piece of track in excellent condition. 1825

Q. What have you to say as to the weight of rail used on that track? A. The weight of rail ranged through an exceedingly wide range, a regular curiosity shop, from four inch old horse car rail up to a very modern, a ninety-two pound girder rail. 1826

Q. Was there much of the light rail? A. There was a good deal of the light rail, roughly about a third as I recall it that was of the light weight below sixty pounds, which I consider from my experience as representing the limit for electric railway operation.

Q. Does that mean that you considered that one-third of the track was not suitable for electric railway operation? A. Not quite that. There was some very light cars in operation. I would say that it was about a fifth of the track that was decidedly in poor condition and needed to be changed at once. Then the rest of it, there was perhaps two-fifths more that was passable and another two-fifths that was very good. 1827

Q. You spoke about the small light cars. What can you say about the trolley cars? A. The property had on it a very large proportion of cars that seemed to have been old horse cars that had been turned over and electrified. That was very common practice at that time. They were

very light single truck cars, and most of them were in pretty bad condition.

Q. Was it in your opinion at the time necessary to replace a great many of them with new cars? A. Yes.

Q. And was that done? A. That was done.

Q. How much did those new cars cost, by the way? A. I didn't check that, but there were several hundred thousand dollars spent on new cars.

Q. How much did they cost each? A. The cars that took the place of the old cars would cost between $5,000—between a little less than five to nearly $6,000.

Q. You were familiar with the cost of building trolley track at that time? A. I was.

Q. Are you familiar with the cost of similar work now or were you in 1935 and 1936? A. Yes.

Q. In the same territory? A. The same territory.

Q. What can you tell us as to the relative costs in the two periods? A. The track as of 1936 cost approximately one and a half times the track of 1906.

Q. Could you make a similar comparison of costs of overhead wire construction? A. Yes.

Q. What would that show? A. That would show that the 1936 overhead was at least one and a half times as much as that of 1906, and I should have said that the one and a half is a minimum figure on the track.

Q. On the track? A. On the track, yes.

Q. Would there be any appreciable difference between 1906 and 1907 on either of these figures? A. No.

Q. Would there be any appreciable difference between 1935 and 1936 on any of these figures? A. I think not.

Q. About what proportion or how many of these single truck light cars did you take over from the C. R. & L.? A. I think we got about two hundred, a little over two hundred, and about a hundred more that were of a heavier type. As I remember it there were two or three hundred cars available. 1831

Q. And two-thirds were of the—— A. Two-thirds were of the light character—very light character.

By Hincks, *J.*:

Q. All double truck? A. No, the little ones were all single truck, your honor. The inter-urban cars were double truck cars very similar, that is, to some that we had been using on the Consolidated previously. 1832

By Mr. Garfield:

Q. When you made substitution of new cars for the single truck, did you get double truck cars? A. Yes.

Q. In your opinion, Mr. Harte, did those made over horse cars have rider appeal? A. Rider appeal, I should say. 1833

Q. I will ask you about the buildings which were taken over in 1906. What were the buildings in Bridgeport? A. Bridgeport had three groups of car houses; the Barnum Avenue group, which was one brick building and two or three wood frame sheds going with it. That was a block that was filled in with them. Most of it had been old horse car stables.

Q. What was the condition of those buildings? A. They were in bad condition.

Q. What was the subsequent history of them? A. They were sold, the buildings and the land,

1834 for $37,500 to the Union Metallic Cartridge people.

Q. What is the condition of the carbarn in Bridgeport, which we hope our agreement will result in turning back to the C. R. & L., now? A. That is a very good brick and concrete steel frame structure in excellent condition.

Q. Worth more than $37,500? A. We spent approximately $350,000 in building it—the building alone.

Q. What can you say about buildings in Waterbury? A. In Waterbury there was one repair
1835 shop which was under completion. It was one of the C. R. & L. projects, which had been started and was not finished. That was a good building—is standing today. The rest were frame buildings in various stages of decay.

Q. What did you do with them? A. They were torn down. They were used as long as there was any available life in them. We carried them on as much as we could, and then eventually there was a fine set of car houses and shops put up there to supplement the one repair shop in the building itself in good condition.

Q. These new car houses and the repair shop
1836 have now been turned back to the C. R. & L.? A. They have.

Q. What can you say about power plants in 1906? A. There were several power stations. There was a station at South Norwalk in a largely antiquated brick building, but with rather ancient machinery. There was a power station in Bridgeport, the Seaview Avenue Station. That was a brick building in fair condition. I remember one or two engines in good condition and one or two that were old engines.

There was a power station at Shelton, a brick 1837
building, a power station and reinforcing storage battery. That was old apparatus, the battery being in order to take care of the load when the station broke down.

There was a very old station at Waterbury, the Bank Street Station.

There was a station at New Britain, a brick building. The Bank Street I am not sure whether that was frame or brick. I haven't been in it, and I think it was a frame building, but I am not quite sure. The New Britain was a brick station. We had fire apparatus in it. Shelton had two 1838
very old engines.

Q. Taking all these generating stations together, did they produce enough electricity to operate the C. R. & L. trolley tracks at the time the property came over to you? A. No, they did not.

Q. What was the C. R. & L. doing as to the deficiency? A. They were buying a very considerable amount of power from the New Milford Power Company, a subsidiary of the U. G. I.

Q. What can you say about the feeder system? A. The feeder system, except that it was inadequate, served its purposes. There were a good many of the cables—they were the so-called 1839
weatherproof cables—which needed shaving badly. The weather proofing was hanging down. It doesn't affect the operation at all, but it's a thing that the public usually takes exception to.

Q. You say "except for inadequacy." What do you mean? A. There wasn't enough copper.

Q. By that you mean wire? A. Yes, to give the proper carrying capacity for the current that was needed by the cars.

Q. What have you to say in regard to the overhead trolley system? A. The overhead trolley system was also down at the heels, and the trolley

1840 wire itself was small. A good deal of it was what is known as "10" trolley wire.

Q. What did you do about the feeder system and the overhead trolley system? A. We spent a very large amount of money in putting in new feeders distributing power up to the line, and we rebuilt the overhead construction. That was spread over a rather broad program, taking what we considered dangerous first and filling up and taking care of the rest of it as opportunity offered.

Q. Were there parts of this property that you
1841 considered dangerous? A. May I say in regard to the overhead, when I said dangerous I meant dangerous to the operation. I don't wish to give the idea that it was necessarily a threat to the public and the men. There was a good deal of the track that was to my mind decidedly dangerous.

Q. Dangerous? A. Dangerous to the public. It was liable to cause derailments after we got it for a very considerable time and until we renewed it, and I was always very much afraid that we might have a very serious disaster.

Q. Now, was the work that you recommended
1842 in the way of improvements and betterments to these various classes of property work which you considered necessary? A. The first recommendations were work that I considered absolutely necessary.

Q. Absolutely necessary for what purposes? A. For safety.

Q. Safety of the public? A. Safety and continuousness of operation.

Q. You mean for safety to the public? A. Safety to the public and safety to our own men.

Q. And for continuousness of the service? A. Continuousness of the service.

Q. Now, you limited that to the first recommendation that you made? A. Those were the first. Then the second series of recommendations ran to the bringing of the property up to the standard which we were maintaining of our own property and towards the standard which we were working to bring all the lines. 1843

Q. When you say "our own," you mean the Consolidated Railway? A. The Consolidated Railway, yes.

Q. Can you tell us approximately when the first series of recommendations ceased and the second began? Can you fix that in any way? A. No. I should say possibly the end of 1908. Much of it was done in 1907. Some of it—we had a good deal of difficulty with the city authorities with regard to the rights to do much of this work, and we had to hold up on a good deal of the work for that reason. 1844

Q. When you mentioned the year 1908, does that mean that your first series of recommendations carried through until the end of 1908? A. I think that is true. There were some paving cases that we were not able to adjust. Bridgeport was a city that we had a great deal of trouble with, and we had a great deal of difficulty in getting the authority to go on with the work. 1845

Q. I haven't asked you about shop facilities and tools and about general office equipment. What can you tell us about those items? A. There was no general office equipment. There were several superintendents' offices with the ordinary superintendence equipment, as I should consider it, but there was nothing in the way of an executive headquarters.

As to shops there seemed to be a standard (?) for all of the shops, one or two lathes for taking

1846 care of the car axles—what is known as a boring mill, which is practically a lathe stood on end for taking care of the car wheels. Then the rest of it was largely the hammer and screw driver Mr. Martin testified to.

Q. I show you Exhibit 101 for identification, which has in it the "extensions made since the date of the lease, August 1, 1906, to C. R. & L. trackage now in operation, October 23, 1935." I ask you whether you are familiar with the list of the properties shown on that exhibit? A. I am.

1847 Q. Are all of those properties properly described by the heading to that exhibit? A. They are.

Q. Are those all properties consisting of tracks and roadway property and the electrical overhead? A. They are.

Q. Is there any difference in the list of these properties between October 23, 1935 and December 17, 1935? A. No.

Q. Were there other extensions made from time to time by the Consolidated or The Connecticut Company to C. R. & L. which if they had been still in existence in October, 1935, would 1848 have properly been includable in this list? A. Yes.

Q. Can you tell us about what mileage there was of such extensions? A. There were about seven miles.

Q. In addition to those shown? A. In addition to those, yes.

It was stated by counsel for C. R. & L. at the close of the hearing that C. R. & L. has waived any claim under paragraphs 5a, 5b, 5c, 5e, 5f and 6 of its proofs of claim against both Debtors.